INSURANCE LAW

TOPIC- FRAUD AT THE TIME OF PROPOSAL/CLAIM PAYMENT

I. INTRODUCTION:

What is Insurance and why is it important to get insured?

As Human beings our life and the property which we possess such as land, jewelry, house etc. is always surrounded by the risk of death, disability, destruction, theft, damage, robbery etc. These types of risks usually bring huge financial losses with them and the people lose a big part of their hard-earned income in making good the losses.

Therefore, Insurance is a prudent way to transfer such risks to an insurance company. Insurance is a legal agreement between two parties i.e. the insurance company (insurer) and the individual (insured). In this, the insurance company promises to make good the losses of the insured on happening of the insured contingency.

The contingency is the event which causes a loss. It can be the death of the policyholder or damage/destruction of the property. It's called a contingency because there's an uncertainty regarding happening of the event. The insured pays a premium in return for the promise made by the insurer. Insurance law follows the doctrine of *Uberrimae fides* which means that an insurance contract is a contract of Utmost Good faith. Both the insurer and the insured needs to be in utmost good faith with each other. That is the insured should honestly disclose each and every material fact to the insurer and should not make any misrepresentation and the insurer in return should promise to keep the material information up to himself only and should not disclose it outside. The insurance law in India is governed by The Insurance Act, 1938. Through the years certain amendments have been made in the Act.

Types of Insurance:

Insurance in India can be broadly classified into categories: Life Insurance and General Insurance which includes- Health insurance, education insurance, motor insurance, home insurance etc.

II. PROPOSAL AND CLAIM IN INSURANCE LAW:

The ***proposal*** in ***insurance*** means a request, from the proposer to the insurer, for giving protection against a risk. This request may be made orally or in writing through a letter or very formally through a printed proposal supplied by the insurers.

'When applying for insurance, a proposer has to fill out the proposal form of the life insurance company. The Proposal form is an important document which provides the details of the proposer and the life assured and which is used as a basis to ascertain the insurability of an individual. Important aspects of your policy such as premiums, and the terms and conditions are based on the information that you provide in this document. The insurance contract is based on the trust that the details you enter in the proposal form are accurate and to the best of your knowledge.'[1]

When the policyholder makes a formal request to the insurance company for coverage or compensation for a covered loss or policy event, it is known as ***insurance claim.*** The insurance company validates the claim and, once approved, issues payment to the insured or an approved interested party on behalf of the insured. Insurance claims cover everything from death benefits on life. insurance policies to routine and comprehensive medical exams. In many cases, third-parties file claims on behalf of the insured person, but usually, only the person(s) listed on the policy is entitled to claim payments.

Types of Claims:

- **First-party Insurance Claims-**

  Whenever the insured person suffers from illness or sustains injury or acquires damage to an insured piece of property, he/she can submit a claim directly to the insurance company for payment or in some cases reimbursement. This is known as First-party coverage. It is the duty of the insurance company to treat the insured party in utmost good faith and if the company fails to do so then the insured can bring about an insurance claim against the insurance company and ask for damages beyond those mentioned in the insurance contract. This is known as first-party claims.

- **General Claims-**

[1] Exidelife.in. 2020. *Insurance Policy Exide Life Insurance*. [online] Available at: https://www.exidelife.in/knowledge-centre/blogs-and-articles/importance-of-a-proposal-form-and-thedeclarations-made-therein

General claims arise when there is a dispute over the scope of coverage, the amount of payment owed, missed or late payments on the part of the insured or misrepresentations made at the time of policy's sale or amount of coverage provided by the insurer.

- **Car Insurance Claims-**
  As people drive vehicles, they usually get an insurance policy for their vehicles. The insurance companies do not always pay the claims and refuse them by saying that the loss is not within the scope of policy coverage. But when the insurers refuse to pay legitimate claims or do not make a proper investigation, the insured may file a claim against them.

- **Health Insurance Claims-**
  People get health insurance in order to cover high medical expenses if and when they suffer a serious illness or accident. If the insurance company refuses to pay any legitimate claim, the insured may make a claim against such insurance company.

- **Homeowner Claims-**
  Homeowners get insurance of their houses or property in order to safeguard themselves against any financial loss due to unseen misfortune in future like wildfire, tornadoes, earthquakes, etc. when the company rejects legitimate claims or does not pay any heed to the proper investigation the insured party may make a first-party insurance claim against the insurance company.

- **Natural disaster Claims-**
  Policies are taken by people to insure themselves against the natural disasters like hurricanes, earthquakes etc. but not floods. Claim can be filed against insurance company by the business or property owners if it fails to pay for a legitimate claim.

- **Early death Claim-**
  Early death is one wherein the insured dies within three years of having taken the policy. His nominee or assignee mentioned in the insurance policy can claim the amount and should send a claim intimation as soon as possible to the insurance company. The claim intimation should carry the information like place, time and cause of death.

III. FRAUDS IN INSURANCE LAW:

With a number of opportunities and benefits, there is always present an evil side in the mankind of unlawful gain and loss to others. All huge and flourished industries are surrounded by the risk of fraudulent activities within and from outside the premises. One of them being the highly rated and flourished Insurance Sector in our country, even

though risk management and anticipation of the uncertain peril has always been done there. The Indian Insurance Act does not contain definition for 'insurance fraud'. Neither have any specific laws connected to insurance fraud been spelled out in the Indian Penal Code, 1860(IPC). There is always a risk that whether the insured party may gain fraudulently and hence the insurance company will have to face losses. Fraud affects the lives of innocent people as well as the insurance industry. Insurance fraud has existed ever since the beginning of insurance as a commercial enterprise. It takes many forms and may occur in any areas of insurance.

'**Webster's Dictionary** defines 'fraud' as *the Intentional perversion of truth to induce another to part with something of value or to surrender a legal right or "An act of deceiving or misrepresenting.'*[2]

The Insurance Regulatory and Development Authority (IRDA) has on several occasions taken up the International Association of Insurance Supervisors' (IAIS) definition, *"an act or omission intended to gain dishonest or unlawful advantage for a party committing the fraud or for other related parties."*

The Federation of Indian Chambers of Commerce & Industry define insurance fraud as, *"The act of making a statement known to be false and used to induce another party to issue a contract or pay a claim. This act must be wilful and deliberate, involve financial gain, done under false pretenses and is illegal."*

An insurance fraud could either be a hard fraud or a soft fraud.

A hard fraud occurs when someone deliberately plans or invents a loss such as a theft of a motor vehicle or setting fire to property covered by an insurance policy.

Soft frauds are more common and include exaggeration of legitimate claims by policyholders. They are also referred to as opportunistic frauds. Insurance companies, their intermediaries or those pretending to be either of them may also perpetrate frauds.

When a person is insured with the insurance company there are certain legal regulations that need to be followed on behalf of both the parties for the fruitful benefit of the insurance policy. Even if one party is at fault, the insurance policy will not result in the delivery of the cause for which it was made. The contract of insurance between the insurer and the insured is based on 7 basic principles. The insurance is technically called as an ***uberrimae fidei*** contract. This principle demands the parties entering into

[2] "fraud." Merriam Webster Online Dictionary. 2020. https://www.merriam-webster.com/ (10 Apr. 2020)

the contract to abide with the utmost good faith. But with this good faith, the insurers are often unaware of the ***Pandora's box*** which they might open up or give scope to.

i.e., the miserable insurance frauds. Pandora's box is usually used as a metaphor which means 'troubles arising from a simple inaccuracy'.

'The term 'insurance fraud' basically means the exploitation of insurance contracts through illegal means for financial enrichment. Although many cases of insurance fraud by the insurers have been recorded, major cases of fraud reported are committed by the policyholders who malign the insurance contracts by attempting to make more money through exaggeration and disillusion of claims. In the cases of life insurance, the frauds are mostly defined at the initial stage by furnishing false pieces of information in the claim form deceiving the insurance company like presenting false identity cards, false birth certificates, and covering up of pre-existing medical history are very common ways of executing a life insurance policy which otherwise is void ab initio. Application fraud, exaggerated claims, post-dated insurance policy, fake and unnatural deaths, fraudulent house owners, workers compensation frauds, false injury are prevailing insurance scams. Often, homes are burnt down, vehicles are purposefully destroyed, sold to a third party or leftover for obtaining automobile insurance with the wrongful claim of damage or theft. *The close gap between buying of policy and pressing of claim is an issue that ultimately turns out to be insurance fraud.* A combination of poor due diligence in scripting policies by insurance companies and the organizational skills of the fraudsters in identifying the possible places of effectuating frauds is taking a big toll on the insurers.[3]

➢ **Types of Insurance Fraud:**

'The Insurance Regulatory and Development Authority of India which is the apex body and overseeing the business of Insurance in India sets out these 3 broad categories of fraud –

[3] Kinf Stubb & Kasiva, *Insurance Fraud: The Pandora's Box* , LEXOLOGY (Feb. 24, 2020), https://www.lexology.com/library/detail.aspx?g=bcd71546-06cc-4a02-b1b4-663bbf76f9ad

Policyholder Fraud and/or Claims Fraud – Fraud against the company in the purchase and/or execution of an insurance product, including fraud at the time of making a claim.

Intermediary Fraud – Fraud perpetuated by an insurance agent/Corporate Agent/intermediary/Third Party Administrators (TPAs) against the company and/or policy holders.

Internal Fraud – Fraud/ misappropriation against the company by its Director, Manager and/or any other officer or staff member (by whatever name called).'[4]

The event of misrepresentation and illicit experiences sway the concerned business by obstructing the work process. Insurance Regulatory and Development Authority of India ("IRDAI") turned up with the 'Insurance Fraud Monitoring Framework' to help curb insurance frauds and to help companies to prepare better for spotting frauds.

IV. FRAUDS AT THE TIME OF VARIOUS CLAIM PAYMENTS-

1) Making false claims-

One of the most widely recognized kinds of insurance fraud is making a case for a mishap that never occurred or was arranged or work that was never performed. Slip and fall claims are likely the most well-known sort of arranged accidents since wounds are difficult to demonstrate or invalidate and potential payouts can be high. At the point when a vehicle proprietor possesses their vehicle through and through, they will here and there harm their own vehicle and make an accident claim. At that point, when they get a claim from the insurance agency, they will either have the vehicle fixed reasonably or just not get it fixed. At times, a property might be worth a lot not as much as what it is protected for. The proprietor may procure somebody to burn down the property - or set it ablaze themselves - so as to make an insurance claim.

2) Inflated Claims and Disaster fraud-

[4] Pandey, A., 2020. *Legal Actions Against Fraudulent Insurance Claims - Ipleaders*. [online] iPleaders. Available at: https://blog.ipleaders.in/false-insurance-claims/.

Inflated claims can happen at any time, but they tend to be the most plentiful in the wake of natural disasters. Whenever there is a natural disaster large enough to affect an entire region, the area almost invariably becomes flooded with scam artists and hucksters trying to make a buck off the insurance companies. In some cases, homeowners may knowingly sign inflated claims for work that was never done and in others cases, they don't actually know that the work the insurance company is being billed for was never performed. Because of the high volume of claims being made, insurance companies simply do not have the personnel available to go out and investigate every claim. It is not unusual for a single home to be left completely untouched right in the midst of a ring of homes that are burned, flooded or otherwise destroyed or a car or other valuable to survive in pristine condition. Insurance companies generally rely on data to determine which homes are eligible for coverage and which are not. When a home or other property remains intact in an area of major damage, policyholders can submit claims which are often paid sight unseen.

3) **Faked Death-**

Faking your own death is such a common type of fraud. The premise is fairly simple. A policyholder will take out a large life insurance policy on themselves and then fake their own death. When the beneficiary (or beneficiaries) receive the insurance payout, they simply ride off into the sunset with their supposedly deceased loved one. Or, as is probably far more common, they simply double-cross the supposedly deceased loved one and vanish into the sunset by themselves - with their generous insurance payout.

4) **Insurance Company Frauds-**

Not all insurance fraud is committed by policyholders or by defrauding policyholders. A great deal of insurance fraud is also committed by insurance agents or agencies. Some of the more common types of insurance agency fraud include premium diversion and fee churning. Premium diversion is actually the most common type of insurance fraud and it occurs when insurance agents or agencies simply pocket a policyholder's premium rather than sending it along to the underwriters. In such a situation when the policyholders actually make a claim for the loss suffered, the claim is rejected outright as the premium was not submitted to the company.

5) **Hiding a pre-existing condition-**

Most individual health policies give a definite waiting period for a pre-existing condition/disease. The policyholder by falsifying the report of a pre-policy health check -up, conceal this fact.

6) **Fabricated documents to meet terms and conditions of the Insurance-**

Youthful people are an obvious choice for insurance by the companies. Any person with a different attribute, for example, a person aged, may not necessarily face rejection of his application but may be charged more premium. In this case people try to conceal age or chronic diseases. Faking disability also comes under this.

7) **Duplicate bills of exchange-**

Submission of forged or inflated bills is also fraud, especially when no expenses have been undertaken. The objective of health insurance, to cover the medical expenses incurred when one has diseases or requires surgery, is defeated then. An insurance policy is not supposed. to be profitable.

8) **Withholding information of multiple policies-**

It is the responsibility of the insured to inform all the other insurers of the existing policies whether. group, individual to prevent the making of multiple claims on an issue and make a profit out of it.

9) **Participating in fraud rings-**

A person might collude with another like an agent or doctor or providers to make a false claim, for example, alter information at their bequest to make a claim.

10) **Motor Third party fraud claims-**

The modem Operandi of a fraud claim generally goes like this on hearing of a road accident, an advocate immediately rushes to the spot. Volunteer to undertake an SOS on behalf of the victim(s) influences the relatives of the deceased or injured, pays some advance towards initial medical expenses, arranges for the necessary documentation to lodge and support an MVC case, conduct the trial and enjoys a very big share in the amount Awarded.

11) Section 45 and fraud:

Section 45 says that no life insurance policy can be called into question on grounds of mis-statement or wrong disclosure after three years of the policy coming into force. However, if the insurer is able to prove that the claim was fraudulent, it need not be passed. In such cases the insured may diligently make some mis- representations or not disclose some material facts to the insurance company in order to get the wrongful benefit out of the claim, Section 45 puts a bar on such fraud doers and says that if it proved that some misrepresentation has been made or material fact has been hidden by the insured then the insurer can completely avoid the contract even after the expiry of several years from the date of issuance of policy and all premiums paid will be forfeited by the insurer. Section 45 provides further protection to the customers by stating that:

No insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer.

Some additional scenarios which shows the presence of chances of frauds are: When information concerning foreign travel is incomplete, inconsistent, or vague, Conflicting descriptions of illness or accident, Insured is a homicide victim, and the beneficiary is suspected of involvement in the death, Death occurs shortly after the contestable period has expired. Etc.

V. CASE LAWS:

The Oriental Insurance Company vs Harapriya Nayak And Ors. on 5 November 1993

Held:

"It is necessary to consider scope and ambit of Section 96(2) of the old Act corresponding to Section 149(2)(b) of the Act. In terms of those provisions, it is open to the insurance company to allege and prove that the policy giving rise to a claim was obtained by non-disclosure of any material fact, or by representation of a fact which was false in some material particular, and was consequentially void. Sub-section (6) of Section 149 of the Act, and Sub-section (5) of Section 96 of old Act define what will

be a material fact or a material particular. The ambit of the clause is wide enough to cover a plea that the cover-note and the insurance policy was obtained by fraud and therefore, the policy was void."

Sulbha Prakash Matalgaoker Vs. Life Insurance Corporation of India (Civil Appeal No. 8245 of 2015)

The insured in the instant case had suppressed the fact that he was suffering from lumbar spondylitis with PID with sciatica at the time of filling the Proposal Form. The insured subsequently passed away due to a heart disease and myocardial infection. Since there was suppression of pre-existing disease, the insurer repudiated the death claim.

The Hon'ble Supreme Court however, held that since the undisclosed disease had nothing to do with the cause of death, the alleged concealment was not of a nature which would disentitle the deceased from getting his life insured and hence, the repudiation of the claim was unjustified.

Bharat Heavy Electrical Ltd. (BHEL) case:

BHEL was a valued client of a Public Sector General Insurance Company giving substantial premium under fire and marine portfolio. Claims were reported regularly and were being settled also. In one particular case, claim cheque issued by office in favour of BHEL was handed over to a development officer for onward transmission to BHEL. Non-settlement of claim and nonreceipt of claim cheque was reported by BHEL. Subsequent enquiry revealed that the cheque had been credited to the account of one BHELA RAM. Without making any alternation in the amount, BHEL was changed to BHELA RAM.

VI. CONCLUSION:

We saw that as many numbers of claims and facilities are available to the policy holders by the insurance company, there are same or greater number of fraudulent activities done by the policyholders to attain wrongful gain at the time of claim payment. To curb the happening of insurance frauds the insurers need to make some preliminary

screening of documents to judge whether in future a fraud can take place or not. Some documents which help identify frauds are FIR, Medico- Legal Certificate (MLC), The Panchnama, Late submission of the in-depth investigation report, Inquest Report, Postmortem Report, Seizure memo, VMI Report, statement of witnesses, charge sheet, criminal court records etc. Continuously gaining wrongfully from the insurance companies will result in their bankruptcy and loss to the lawful policy holders. While insurance frauds directly hurt insurance companies, the indirect victims of this crime are the Policy holders who mostly are oblivious of the impact. There is a serious need at the end of IRDA to issue strict regulations and mechanisms in order to safeguard the insurance companies and innocent policy holders from such frauds.

VII. RECOMMENDATIONS:

As we saw that fraud doers can do anything to claim wrongful gains out of the insurance policy, I recommend that the diligence shown by the insurers can safeguard themselves from such frauds. Such as: Acknowledging the possibility of fraud, Enquiry and crosschecks of documents from the initial stage to detect the fraud, ascertaining the potential of fraud which may help minimize the loss, use of data analytics and statistical analysis to detect fraud, strategizing and improvising software or technical skills and apportioning investigators and keeping records updated. Due to the mounting backlog of pending cases in the judicial machinery of our state, taking legal action against fraud is not a common occurrence and fraud of amounts not big enough are let go off as opposed to the heavy investment of time and energy in pursuing the same so it is suggested that in all cases brought out in the court if the guilt is found out, the claim should be outright rejected.

Some of the provisions of IPC that can help to resolve the issue are: *Section 205- False personation for purpose of act or proceeding in suit or prosecution, Section 420- Cheating and dishonestly inducing delivery of property, Section 464- Making a false document, Section 405- Criminal breach of trust.* Etc.

The Indian Contract Act, 1872 also provides certain legal remedies such as the contract of insurance is also void in as per Section 10 read with Section 14(4) and Section 18 of the ICA generally in cases of fraud.

The best way for everyone to avoid being the victim is to create awareness regarding

this issue and be vigilant. Maintaining the very essence of an insurance contract i.e., utmost good faith by both the parties , can actually secure everyone from the grasp of loopholes After all, the evils from Pandora's box or say the miserable frauds in the insurance industry can very much arise from a simple miscalculation and affect wretchedly.