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Supreme Court opens door for review of fraudulent injury claims

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Decision supports recent legislative changes designed to fight insurance fraud

Settlement agreements can be set aside where new evidence comes to light which proves a fraudulent claim, the Supreme Court has unanimously ruled.

In an important decision for insurers and those advising personal injury claimants, the justices unanimously held that where a representee has been induced to act to their detriment, they can later recover damages for deceit based on fraudulent misrepresentation.



Lord Toulson, who concurred with the lead judgment given by Lord Clarke, explained: 'The question whether there has been inducement is a question of fact which goes to the issue of causation. The way in which a fraudulent misrepresentation may cause the representee to act to his detriment will depend on the circumstances.'

The respondent, Colin Hayward had exaggerated the extent of a back injury he suffered at work, which led to a settlement figure of £135,000 from Zurich Insurance Group, the employer's insurers, in 2003. Six years later, Zurich had gathered further evidence showing that the claimant had fully recovered a year before the settlement.

After Zurich sought to set aside the settlement and claim damages for deceit, HHJ Moloney QC in the county court reduced Hayward's sum to £14,720. However, the Court of Appeal overturned the decision on the basis that Zurich had been aware of the claimant's fraud at the time of the incident. The Supreme Court agreed with HHJ Moloney and ordered the reduced sum to be paid.

David Williams, partner at DAC Beachcroft's claims solutions group, and who represented Zurich, welcomed the decision.

'Today's ruling is a huge boost for counter-fraud initiatives, as it confirms that new evidence obtained after a settlement can now be used to recover the proceeds of fraud.'

'This judgment is crucially important for insurers and defendants faced with a claim they view as suspicious but on which they cannot obtain cogent evidence of fraud.'

Catherine Burt, the group's head of counter fraud, said: 'We are delighted that the Supreme Court has reinstated the decision of HHJ Moloney QC. That original decision was patently fair on the facts of this case but also makes clear to fraudsters that insurers will be able to tackle fraud where it is material, regardless of when the evidence is discovered.'

Last year, the Criminal Justice and Courts Act 2015 came into force allowing a court to dismiss a personal injury claim for damages if the claimant has been fundamentally dishonest.

Williams said that the Supreme Court's decision, along with the provision, was 'another important step in facing down those who are prepared to exaggerate their claim for personal gain'.

Burt added: 'It is very encouraging to see the common law being interpreted in such a way as to support the recent changes in legislation intended to strengthen the fight against personal injury fraud.'

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