698/04

Den 19. maj 2004 blev i sag nr. 61.648:

xxxxxxx xxxxx
xxxxxxxxxx xxxxxxxx
xxxxxxxxxxxx xxxxx
xxxxx x xxxxxxxx

mod

International
Health Insurance
danmark a/s
Palægade 8
1261 København K

afsagt sålydende

k e n d e l s e :

_____

Forsikringstageren, der har rejseforsikring i International Health Insurance danmark a/s, klager over, at selskabet har ændret forsikringen med tilbagevirkende kraft.

Det fremgår af sagen, at klageren i september 2002 udvider dækningen på sin forsikring, og at han i den forbindelse ikke oplyser selskabet om, at han har rectum blødninger.

Klageren gør over for nævnet gældende, at han på tidspunktet for udvidelsen af forsikringen ikke havde kendskab til, at han havde en svulst i rectum, men derimod blot antog, at han led af hæmorider. Klageren påstår således selskabet tilpligtet at tegne forsikringen med den udvidede dækning.

Selskabet har ændret forsikringen under henvisning til, at klageren afgav urigtige helbredsoplysninger på tidspunktet for udvidelsen af forsikringen, og at selskabet – såfremt det havde været bekendt med klagerens blødninger – ikke kunne have tilbudt klageren den udvidede forsikringsdækning.

Klageren har i klageskrivelsen til nævnet redegjort for sagen således: 24/6 2003:

"In July of 2002 my general physician, Dr. P., had suggested that I get a colonoscopy for cancer screening, based primarily on my age. At that time my insurance coverage would not cover this procedure. In Sep. of 2002 I increased my coverage to cover this procedure, explaining my motivations clearly to Mr. A.V.-P., my IHI agent here in Tokyo. He said ok and I proceeded with the colonoscopy in San Francisco in Dec. 2002. At that time a small tumor was discovered and operated on a few days later. Fortunately the tumor was benign.

On Mar. 5, 2003 I was advised by International Health Insurance that my policy was being downgraded from the 'Complete Plan' to the 'Hospital Plan', based on their opinion that my condition was pre-existing. I was very surprised. I had reported to my GP, Dr. P that occasionally I had seen blood in my stool. I also reported this to my surgeon, Dr. R., prior to the colons copy.

I did not regard this as a symptom of anything necessarily serious. I understood that occasional rectal bleeding is a common (80%) factor in men over 50 years old. Thirty years ago I travelled extensively in Asia and had amoebic dysentery and various intestinal parasites so I was not alarmed by the sight of occasional blood in my stool.

I appealed this determination to the president of the insurance company, Mr. P.B.J. and received a letter repeating the pre-existing determination of the companies medical consultants.

Fortunately, the company has covered my medical expenses. My complaint is simply that this was not a pre-existing condition. There was never a diagnosis or treatment prescribed by my doctor for this symptom. My general practioner, Dr. P, my gastroenterologist, Dr. R. and my surgeon, Dr. M. disagree with this determination of pre-existing. They are all willing to write letters to you in support of this.

I would like International Swiss Medical (IHI) to re-instate my original 'Complete Plan'."

Selskabet har ved skrivelse af 19/1 2004 til nævnet anført:

"The complainant S.E. primarily claims to have his IHI Complete Plan reinstated. Alternatively to have removed from his IHI files that the diagnosis in question is pre-existing.

In support of his claim, S.E. denies that his rectal bleedings for more than a year had anything to do with the rectal tumor, which was diagnosed and operated for in December 2002. For the same reasons and due to the fact that he did not find the rectal bleedings of importance, he did not mention it on the Medical Questionnaire when applying for the IHI Complete Plan.

In all other respects, please refer to the correspondence between S.E. and IHI enclosed in the complaint.

**IHI dismisses all claims and it is hereby submitted THAT:**

- According to the policy conditions for an IHI insurance, the insured shall be under an obligation to inform the company of all medical conditions and symptoms known to him at the time of application/extension of cover.

- Hence, S.E. should have informed IHI of his rectal bleedings in the Medical Questionnaire, as these may be symptoms of a serious illness. If he had any doubts as to whether the symptoms should be stated in the Medical Questionnaire, he should have called his IHI agent in Tokyo, with whom he had already had contact regarding his application.

- If S.E. had informed the company of his rectal bleedings in the Medical Questionnaire at the time of applying for the IHI Complete Plan, the company would not have accepted the increased cover until the bleedings had been examined.

- According to IHI's medical consultants the rectal bleedings during the past year were symptoms of the diagnosis rectal tumor. Hence, the diagnosis was defined as pre-existing. Consequently, S.E.'s IHI Complete Plan was decreased to his previous cover - IHI Hospital Plan.

- Even though IHI would not have covered the hospitalisation in connection with the diagnosis rectal tumor in light of its pre-existing character, S.E. was still reimbursed for his medical expenses by the company.

**Conclusion**

The Company adheres to the decision that the rectal tumor was a pre-existing diagnosis due to the presence of rectal bleedings at the time of application for the IHI Complete Plan. Hence, the rectal bleedings should have been stated in the Medical Questionnaire of the application.

Had S.E. informed the company of the rectal bleedings, this would have caused the company not to accept the application until it had been proven that the bleedings were not symptoms of a serious illness.

In the present case, an examination established that S.E. had a rectal tumor. This would have caused the company not to accept the increased cover.

Based on the above arguments, IHI will not take account of the claim to reinstate the S.E.'s IHI Complete Plan.

As to his alternative claim, an insured cannot dictate what to write on documents for internal use of the company. However, IHI can assure him that he has no 'black mark' written on his medical information within the company."

Af Medical Questionnaire B fremgår bl.a.:

"**Medical History**

Do you have or have you previously had any of the following illnesses/disorders? Please tick the appropriate box and underline the illness/condition referred to. **All questions must be answered.**

| | YES | NO |
|---|---|---|
| … | | |
| n) Any other diseaes / Disorders / Accidents | ☐ | ☒ |

I lægeerklæring af 4/8 2003 hedder det:

"Mr. S.E. was first seen in my office on 12-18-02 following a colonoscopy the same day by Dr. D.R., which revealed a rectal tumor. A CT Scan of the abdomen and pelvis showed no evidence of metastatic disease.

The patient was scheduled and subsequently underwent surgery on 12-20-02 at which time I performer a transacral proctectomy. A 3 x 1 cm villous adenoma was excised and pathology revealed of carcinoma.

I do not believe that this lesion was the cause of rectal bleeding reported in Dec. 2001. The lesion size indicated more recent occurrence. I believe the chronic rectal bleeding was secondary to significant hemorrhoidal disease as noted in Dr. R.'s colonoscopy report and the pathology report of 12-20-02."

Nævnet udtaler:

Nævnet har gennemgået sagen og finder at kunne lægge til grund, at klageren i forbindelse med udvidelsen af sin forsikring ikke oplyste selskabet om sin lidelse. På dette grundlag kan nævnet ikke kritisere, at selskabet har ændret forsikringen som sket med tilbagevirkende kraft, idet nævnet må lægge til grund, at selskabet - såfremt oplysninger herom havde foreligget - ville have givet afslag på udvidelse af forsikringen.

Derfor

b e s t e m m e s :

---

Klagen kan ikke tages til følge.

J. Hermann