709/04

Den 25. oktober 2004 blev i sag nr. 63.064:

xxxxxxx xxxxx xxxxx
xxxx xxx xxxxxxxx
xxxxxx xxxxx
xxx xxxx
xxxxx xxxx

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 sygeforsikring i International Health Insurance danmark a/s, klager over, at selskabet har annulleret forsikringen for klagerens datter med tilbagevirkende kraft fra tegningen og afvist dækning i forbindelse med anmeldt sukkersyge.

Selskabet har afvist at dække skaden med henvisning til, at der er afgivet urigtige oplysninger i forbindelse med tegningen.

Det fremgår af sagen, klageren er bosiddende på Costa Rica. Hans datter, A., er født i 1982.

I begæring om sygeforsikring, udfyldt og underskrevet den 12/5 1999, er oplyst, at A. i perioden 1992-1996 havde epilepsi. Selskabet indsatte ved tegningen af forsikringen en klausul for lidelser i den forbindelse. Der er ikke givet oplysning om andre lidelser.

Den 30/4 2003 blev A. diagnosticeret for diabetes. I den forbindelse blev selskabet opmærksom på, at A. i 1998 fik stillet diagnosen Anorexia Nervosa. Af erklæring, dateret 30/4 2003, fra den behandlende, spansktalende, læge er i engelsk oversættelse anført:

> "A. has been under my attention for several years for the treatment of Anorexia Nervosa initially and in the last two years for controlling an eating disorder of compulsive consumption of food. Her preferences have been of an excess of carbohydrates and very few proteins. Recently this pattern had improved. She takes Cipromil for alleviating symptoms of depression and separation anxiety along with attacks of claustrophobia. Also Topamax to reduce the compulsive appetite."

Lægen har i udtalelse, dateret 23/6 2003 anført:

> "I hereby clarify that A. has been my patient since the year 1998 because of her anorexia nervosa and its sequels. Recently, she was diagnosed with diabetes mellitus and was examined at the Hospital CIMA-San Jose. The latter is a new condition, independent from anorexia nervosa. A. has privately paid for her treatment of anorexia nervosa and does not seek to claim any reimbursement for this condition. I make this clarification by request of Mrs. J.N., mother of A., your insured client."

Lægen har i erklæring dateret 30/7 2003 uddybende anført:

> "A. was attended for the first time at my office in February, 1998, by request of L.M.O. At that time A. presented an eating disorder compatible with the diagnosis of anorexia nervosa. Treatment was begun and A. progressed favourably in the first two months with respect to the cardinal symptoms of anorexia, but she continued with problems of disorderly of compulsive eating.
>
> A.'s parents have informed me that when included A. in the family health insurance, they did not include the diagnoses of anorexia nervosa. A plausible explanation for the latter is that, due to the fast improvement of the cardinal symptoms of her anorexia, her parents may have omitted that information because A.'s clinical profile progressed rapidly into an eating disorder without a specific diagnosis. Thus, the diagnosis of anorexia nervosa was not effective in A.'s parents' memory.

I incline myself to the explanation aforementioned since I have a professional relation of many years with A.C. and J.C. [A.'s forældre] and I cannot think that there may have existed bad faith at omitting this information."

Klageren har over for nævnet nedlagt påstand om, at selskabet er uberettiget til at annullere forsikringen for A. Klageren har i skrivelse af 18/12 2003 anført:

"In accordance with Section 9 of the Law, an insurance company shall not cancel a policy by alleging that the insurance beneficiary omitted information if, 'at the time of granting the … insurance the circumstance that was ignored by the company ceased to be relevant.'

As I explained before, in 1998 A. suffered from anorexia nervosa, but she progressed and surpassed her illness very quickly. In fact, at the moment of taking the IHI insurance, A. no longer suffered anorexia nervosa but had some eating problems that were neither relevant nor important for issuing the policy, as confirmed by Dr. H.A., a professional in charge of A.'s case, in his note of July 30'h, 2003.

In other words, the information omitted involuntarily in the application for the policy were neither relevant nor important at the moment of taking the insurance and, therefore, in accordance with Section 9 of the Law, IHI is not authorized to cancel the policy by alleging an omission of information by the insurance beneficiary.

…

In accordance with Section 7 of the Law, 'the omission by the insurance beneficiary of supplying information will not affect the company's responsibility, unless the beneficiary knew of the relevancy that such circumstance had for the company'.

As indicated and proved in Section I of this complaint, the omitted information was neither relevant nor important at the moment of taking the insurance. A.'s disorder did not produce any disruption in her physical or mental health. In consequence, I did not know nor should have known that the omitted information might have been important for IHI.

Based in the aforementioned and in accordance with Section 7 of the Law, the omission of information cannot affect IHI's responsibility and, therefore, the latter shall maintain A.'s insurance policy as effective.

…

As indicated, the omission in the case of A. was not voluntary, nor was it fraudulent or in bad faith. In fact, from the beginning of the policy and until today we have not collected from IHI any expense related to or resulted from A.'s eating disorders, which demonstrates that the omission was not made with the purpose of defrauding or deceiving IHI.

…

Article 1.3.1. of IHI insurance policy authorizes the issuance of insurance under special conditions, containing exclusions related to health previous conditions or illnesses (see translated document attached). Since the omitted information was not relevant nor material for IHI and, in any event, since the omission was proved to be involuntary and in good faith, IHI should be forced to maintain A.'s insurance as effective but under special conditions (by excluding all expenses related with anorexia nervosa and other eating disorders, apart from those related with epilepsy, which were excluded from the beginning), instead of cancelling the insurance policy in its entirety."

Selskabet har over for nævnet fastholdt sin afgørelse. Selskabet har til støtte herfor i skrivelse af 20/1 2004anført:

"Had A.'s medical history of Anorexia Nervosa been declared at the time of application we would not have been able to offer the insurance to A.

In July 2003 we therefore cancelled the policy in accordance with our Policy Conditions; §13.4 (copy of our letter of cancellation (Enclosure 3) and Policy Conditions (Enclosure 4) are enclosed.

Anorexia Nervosa is a very serious diagnosis and it is indeed difficult to understand if such a disease can be forgotten when applying for health insurance. A medical history of Anorexia Nervosa would always cause us to ask for further medical information at the time of application.

However in the application of A. there was no mentioning of anything related to Anorexia Nervosa, nor her treatment with medication as well as the fact that she was still

under medical control for problems of disorderly or compulsive eating. We have therefore concluded that our medical underwriting of this policy was made on insufficient and incorrect information and acted in accordance with the Policy Conditions §13.4."

Selskabet har i skrivelse af 12/2 2004 supplerende anført:

"The crucial argument is that A. had been diagnosed with and had been in medical treatment for the diagnosis Anorexia Nervosa and that this was not declared in the application form.

Had the above been declared, our company would have been unable to offer Health Insurance for A. and following we cancelled the policy in conformity with the Policy Conditions."

Af forsikringsbetingelsernes punkt 13.4. fremgår:

"13.4 Where upon taking out the insurance of subsequently, the policyholder or the insured has disclosed incorrect information, the insurance contract shall be void, and the Company shall not be liable if the Company would not have accepted the insurance if the correct information had been disclosed. If the Company would have accepted the insurance but on other terms, the Company shall be liable to the extent to which the Company would have undertaken the obligations in accordance with the agreed premium."

Af forsikringsbetingelsernespunkt 14 fremgår:

"**ART. 14 DISPUTES, VENUE ETC.**

14.1 Any disputes arising out of or in connection with the insurance contract shall be settled in accordance with Danish law (Ankenævnet for Forsikring, Anker Heegaards Gade 2, 1572 Copenhaven V, Denmark) with Copenhagen as the agreed venue."

Nævnet udtaler:
Nævnet har lagt til grund, at tvisten skal afgøres i henhold til dansk ret.

Nævnet finder, at der i den underskrevne begæring dateret 12/5 2001 klart er givet urigtige oplysninger, idet der ikke er oplyst om, at A. var diagnosticeret for anorexia nervosa.

På dette grundlag kan nævnet ikke kritisere, at selskabet med hjemmel i forsikringsaftalens punkt 13.4 har annulleret forsikringen som sket, idet nævnet herved finder det ubetænkeligt at lægge til grund, at selskabet ikke ville have antaget den pågældende forsikring, såfremt de korrekte helbredsoplysninger havde foreligget dengang.

Som følge heraf

b e s t e m m e s :

Klagen kan ikke tages til følge.

Poul Sørensen
formand