811/09

Den 14. april 2009 blev i sag nr. 73.989:

xxxxxx xxxxxx xxxxxx
xxxxxxxxxxxxx xxx xx
xxxx xxxxxxxx

mod

Danske Forsikring
Borupvang 4
2750 Ballerup

afsagt sålydende

k e n d e l s e :

_____

Forsikringstageren, der har motorkøretøjsforsikring i Danske Forsikring, klager over selskabets afvisning af at yde forsikringsdækning for en anmeldt motorskade samt over, at selskabet har anmodet værkstedet om udbedring af skade på bilens front uden klagerens samtykke.

Det fremgår af sagen, at klageren den 17/3 2008 påkørte et parkeret køretøj, hvorved klagerens bil fik en mindre frontskade. Klageren kørte efterfølgende i bilen som normalt og uden problemer indtil den 31/3, hvor hun på motorvejen opdagede, at temperaturmåleren viste, at motoren var meget varm. Klageren oplyser, at måleren straks efter blev normal igen, men efter ca. 20 min. tabte motoren kraften, hvorefter hun kørte ind til siden og lod bilen hente af Falck.

Selskabets taksator har efterfølgende konstateret, at bilens køler havde fået en lækage, der har gjort, at vandet langsomt er sivet fra køleren
Klageren har i redegørelse til selskabet af 14/4 2008 beskrevet hændelsesforløbet således:

> "On 17 March, in the car park at my office, I hit a parked car. There was quite a bit of snow around but there was not too much damage to either car. My car had some scratches and a little dent on the front and on the number plate but wasn't badly damaged and when I drove it home it was fine. I asked the person whose car I had hit to take his car to the garage for a

> quotation to see how much it was going to cost to repair. I thought maybe since I had a high excess, 7023 dkk, I could pay for it myself and not need to put it through the insurance.
>
> Since then and until the 27 March I drove it to and from work (approx 10 mins each way). Nothing appeared mechanically wrong with it to me and I was panning to take it to the garage for repair at some point but I didn't think there was hurry as the damage wasn't really noticeable. On 27 March I drove it to the airport and parked it in the car park there until 31 March when I returned around 11.30 pm. When I was driving on the motorway my eye was suddenly caught by the temperature gauge which had moved up to the top of the dial. I was concerned by this then it suddenly returned to the middle again which it usually was so thought it had jumped by mistake but then rectified itself again. After around 20 mins I noticed the car was slowing down and there was no acceleration. I managed to pull the car over onto a safe bit of the motorway and called Falck. …
>
> The insurance company told me that the engine was broken and needed replaced and that since it was my fault I needed to pay for it but that they would cover the damage to the front of the car. They said that I had not filled the car with water and driven it on an empty water tank and that was why it had broken down. I said wasn't aware there was no water as apart from the very quick increase in the heating gauge which rectified itself almost immediately afterwards, there was no sign that anything was wrong with the car at all.
> …
> I believe that the bump to the car on 17 April must have put a small crack in the water container which wasn't noticeable and which probably was only leaking very slightly and which didn't register on the panel in the car."

I klageskrivelse til nævnet af 21/5 2008 fremgår, at klageren desuden er utilfreds med, at selskabet har ladet bilens frontskade reparere uden hendes samtykke, og hun har nedlagt påstand om, at selskabet skal reparere bilen helt eller tilbagebetale selvrisikoen:

> "After almost 2 weeks the engineer from the insurance company went to see the car and I called the insurance company - they said they would pay to fix the front of the car but not the engine - they said it needed a new engine and I had been driving it without water. There was no warning light of any sort to tell me the car needed water. It has just come out of the garage at the end of January and they said it was 'as good as new'. This was less than two months later. My car was serviced for its 15,000 service at Toyota and was due for its 25,000. I take good care of my car and any small things it needs (it needed replacement window wipers) - I always went to Toyota in order to keep the car in really good condition.
>
> I asked the garage in G. how much a new engine would be and they said 34,000 dkk which I cannot afford. So I told them not to go ahead with fixing anything on the car as I wanted to appeal to the insurance company to reconside. …
>
> A colleague of mine at work here called G. to ask what exactly the damage was to the car and he called a friend who has a garage. He then told me that his friend would fix the front and put in a reconditioned engine for cheaper. He also said that he could fix the front for less than the excess on my insurance policy and therefore I wouldn't need to claim. However when I called Toyota in G. to arrange for them to leave the keys for the tow truck they told me they had repaired the damage to the front according to the request from the insurance company. Shortly after I received the bill for the excess - 7023 dkk from TopDanmark which I now have to pay on top of everything else for a car that does not work. I did not want to repair only part of the car and if I did I would have had a reconditioned

want to repair only part of the car and if I did I would have had a reconditioned engine put in and repaired the front at a later date. …

I would like the insurance company to pay to fix my car now that I have to pay the 7023 dkk for the repair to the front. The insurance company should have checked with me before they instructed the garage to make the repairs to the front as I would not have let the Toyota garage undertake the work."

Selskabet har heroverfor ved skrivelse af 30/6 2008 bemærket:

"Klager har anmeldt, at hun d. 17. marts 2008 påkørte et parkeret køretøj. Klager fik en frontskade, der af vores taksator er opgjort til 24.314,95. Modpartens skade er opgjort til 12548,00 kr. Klager mente ikke skaden var større, end at hun kunne køre i bilen indtil videre. Skaden på bilen blev ikke nærmere undersøgt.

Som det fremgår af klagers brev til os af 14. april 2008 kørte hun videre i bilen frem til 31. marts 2008, hvor hun på motorvejen pludselig opdager, at temperaturmåler viser, at motoren var meget varm. Klager oplyser i sit brev, at måleren lidt efter blev normal igen, men efter ca. 20 min. tabte motoren kraft.

Vores taksator har efterfølgende konstateret, at bilens køler havde fået en lækage, der har gjort at vandet langsomt er sivet fra køleren.

Vi har anerkendt erstatningspligten for den direkte påkørselsskade på klagers kaskoforsikring, men har afvist skaden på motoren, idet forsikringen ikke dækker skade som følge af kørsel uden vand og olie jf. afsnit 27 stk. 3 i de vedlagte vilkår. Vi har lagt vægt på, at klager hverken fik den oprindelige skade undersøgt eller standsede sit køretøj, da hun konstaterede at motoren var meget varm.

Det er vores opfattelse, at klager ved grov uagtsomhed har tilsidesat sin tabsbegrænsningspligt jf. forsikringsaftalelovens § 52 samt ved forsømmelse at have overtrådt sikkerhedsforskriften med hensyn til kørsel uden vand og olie som nævnt i vores vilkår."

Selskabet har henvist til ankenævnskendelserne 40.584, 62.679 og 67.264.

Forsikringsbetingelserne indeholder bl.a. følgende bestemmelser:

"**27 Hvilke skader er ikke dækket**

A Generelle undtagelser
Forsikringen dækker ikke
…
2. skade der alene opstå i og er begrænset til bilens mekaniske, elektriske eller elektroniske dele (fx motor, transmission, styretøj, elektriske styresystemer eller elektriske komponenter). Skaden er dog dækket, hvis den opstår ved brand, lynnedslag, eksplosion, tyveri, røveri eller hærværk eller under transport på eller ved hjælp af et andet transportmiddel.
3. skade som følge af kørsel uden vand eller olie. Skaden er dog dækket, hvis den opstår ved brand, lynnedslag, eksplosion, tyveri, røveri eller hærværk eller under transport på eller ved hjælp af et andet transportmiddel."

Nævnet udtaler:
Nævnet må som ubestridt lægge til grund, at der ved uheldet den 17/3 2008 er opstået en utæthed i køleren. Nævnet finder herefter, at vandtabet og den heraf følgende skade på motoren er opstået i så umiddelbar tilknytning til den forsikringsdækkede del af skaden, at skaden på motoren som udgangspunkt er dækket.

Bestemmelsen i forsikringsbetingelsernes afsnit 27 A - "Forsikringen dækker ikke … skade som følge af kørsel uden vand og olie" – må vedrørende "påkørselssituationer" anses for en udmøntning af den generelle regel i forsikringsaftalelovens § 52 om sikredes afværge- og tabsbegrænsningspligt. Det er herefter afgørende, om klageren i forbindelse med skaden på motoren har handlet groft uagtsomt.

Nævnet finder, henset til omfanget af skaden, at klageren burde have ladet bilen undersøge efter påkørslen i stedet for at fortsætte med at køre i bilen. Når hertil kommer, at klageren under den senere kørsel bemærkede temperaturstigningen, men desuagtet fortsatte kørslen på motorvejen, finder nævnet, at skaden på motoren må tilregnes hende som groft uagtsom.

Uanset om reparationen af fronten ikke burde være gennemført, finder nævnet det usandsynligt, at reparation kunne være gennemført for et mindre beløb end selvrisikoen, hvorfor nævnet allerede derfor ikke finder anledning til at kritisere selskabets opkrævning heraf.

Som følge af det anførte

b e s t e m m e s :

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Klagen kan ikke tages til følge.

Poul Sørensen
formand