884/12

Den 30. januar 2012 blev i sag nr. 79.887:

xxxxx xxxxxx
xxx xxx xxxxxxxxxxxx
xxxxxxxxxxx
xxxxxxxxxx xxxxxx
xxxxxx xxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har tegnet ulykkes-, sygdoms- og arbejdsløshedsforsikring i Alpha Insurance A/S Han klager over selskabets afvisning af at yde forsikringsdækning i anledning af, at han grundet sygdom ikke har været i stand til at arbejde i fire måneder.

Selskabet har afvist at yde forsikringsdækning med henvisning til, at klagerens lidelse bestod inden forsikringens ikrafttræden, og at klageren har modtaget behandling for lidelsen inden for to år forud for skadeanmeldelsen.

Parterne er blevet orienteret om, at nævnet kun kan behandle sagen efter dansk ret, jf. vedtægternes § 3, stk. 4, og de har givet deres samtykke hertil.

Forsikringen giver bl.a. ret til månedlige udbetalinger i tilfælde af, at forsikrede grundet helbredsmæssige forhold ikke er i stand til at varetage sit almindelige arbejde, eller et lignende arbejde, som han henset til sin alder, uddannelse og arbejdserfaring med rimelighed kan varetage.

Selskabet har i brev af 14/2 2011 til nævnet redegjort for sagen således:

"[Klageren] purchased an insurance policy covering accident, sickness and unemployment with inception date 1 February 2010, by completing an on-line insurance application form (Attachment 1.). Among other things, this form asked [klageren], 'Have you or do you suffer from any major or chronic medical conditions or are you currently taking any medication or awaiting referral for consultation treatment?' [klageren] replied, 'Yes'. He then wrote underneath, 'Meditation for high blood pressure which is now under control.'

This was the only pre-existing medical condition mentioned by [klageren] at this time, yet it is made clear in the Declaration that he was obliged to disclose if he was not in good health, or if he had consulted a doctor other than for minor ailments during the preceding 12 months.

[Klageren] was provided with a Certificate of Insurance on 14th January 2010 (Attachment 2.). In the covering letter [klageren] was advised, 'We have noted the medical information provided on your application' i.e. that relating to the medication for high blood pressure. [Klageren] was advised to refer to the enclosed Policy Wording (Attachment 3.) to ensure that the cover provided met with his needs and requirements.

[Klagerens] policy incepted on 1st February 2010 and already on 28th March 2010 he submitted a claim for Disability/Sickness and completed a Claim Form (Attachment 4.). In that form, under Section 2B, [klageren] claims his disability is due to Arthritis and he admits that he has suffered from this complaint before (in August of 2009) and his doctor under Section 2C states the nature of the disability to be 'Polyarthropathy secondary to gout, renal abnormalities - cause uncertain.
…
as soon as his claim form was received investigations were undertaken to discover the extent to which he had sought medical attention prior to inception of the insurance policy. Our administrators Trent Services discovered that [klageren] had visited his doctor many times in the two year period preceding his application for this policy (see list of doctor's visits in Attachment 5). He had received medication for both arthritis and gout, and was also sent for a biopsy in connection with his renal problems.

In addition, it was discovered that [klageren] had made a similar claim under another insurance policy with TWG Services previously. We have a letter from them dated 5th October 2010 (Attachment 6.) where they state that, 'We have denied this claim, as the customer was not working when certified unfit by his General Practitioner.' This again is an indication that [klageren] may not have been entirely candid when completing his application form for the Alpha PaymentCare policy.

His TWG policy incepted on 3rd November 2009, just three months prior to that taken out with Alpha. If he was 'not working' at the time of submitting his claim to them, this would suggest that he may have been registered as unemployed in the previous 12 months. In addition, their reply indicates that he must have consulted a doctor in the 12 months prior to his completing the Alpha PaymentCare Application Form - at least in order to obtain the sick note from his G.P. also referred to by TWG Services. [Klagerens] condition seems to require recurring periods of time off work.

… has made a claim against Alpha for four months Disability Payment. This is rejected in accordance with the letter from Trent Services dated 8th October 2010 (Attachment 7.).

In view of the matters outlined above, … is clearly not entitled to any payment under his insurance policy with Alpha, since he did not reveal all facts relating to his medical or work history when he filled in the on-line application form. His pre-existing, chronic medical

condition, confirmed by the medical reports received from his Doctor, falls within the policy exclusions and no monthly payment is therefore due.

We trust that the above information and enclosures are helpful and we will look forward to receiving the decision of Ankenævnet for Forsikring in due course."

Af skadeanmeldelsen fremgår bl.a.:

"**SECTION 2A - DISABILITY - To be completed by Yourself**

What is the nature of your illness/injury? **Arthritis**
On what date did symptoms first appear? **28/03/10**
Have you ever suffered from this complaint before? **YES/NO** (if Yes, state when): **01/08/09**
…
SECTION 2B - DISABILITY - To be completed by your Doctor
…
Nature of Disability (full details please): **Polyarthropathy secondary to gout renal abnormalities - cause uncertain.**"

Trent Services, der på selskabets vegne varetager administrationen af policen, har redegjort for klagerens lægebesøg i de sidste år før forsikringens tegning således:

"Medical report for [klageren]

Joint Pain / Arthritis / polyarthropathy

GP visits	10/06/08 Joint pain
	26/09/08 Joint pain
	22/10/08 "
	28/11/08 "
	12/12/08 arthritis - given arcoxia tablets (arthritic pain killer)
	28/05/09 Joint pain
	06/07/09 Joint pain
	12/12/09 Flare up of polyarthropathy
Gout	
	10/08/07
	27/02/09 given etoricoxib tablets for gout
	19/06/09
Renal	13/06/08 review
	05/09/08 "
	16/09/08 "
	16/10/08 "
	05/02/09 Biopsy
	29/04/09 review"

Af forsikringsbetingelserne fremgår bl.a.:

"**3. WHAT THE WORDS MEAN**

4. 79.887

Some of the words and phrases **We** use in these **Policy** terms and conditions have special meanings and these are shown below in **bold type** with their meanings alongside them. Except where the context otherwise requires, the masculine shall include the feminine, the singular shall include the plural and vice versa as appropriate.

…

Chronic Condition	Means any **Condition** that continues indefinitely, or cannot be cured or eradicated and that may recur or requires ongoing treatment.

…

Disability	Means **You** have a medical **Condition** certified by a **Doctor** or **Consultant** as preventing **You** from doing **Your** normal **Work** or any similar **Work** which **You** are reasonably able to do given **Your** experience, education and/or training and **You** are not doing any other **Work** for payment or reward.

…

Pre-Existing Condition	Means any medical **Condition** for which **You** received treatment, medication or advice (including regular or routine examinations or consultations to monitor the **Condition)** from a **Doctor** or **Consultant** in the 12 month period immediately prior to the **Start Date.**

…

5. PAYMENT OF CLAIMS FOR DISABILITY

If **You** are **Working** and **You** suffer a **Disability** during the **Period of Cover, Your** first **Monthly Benefit** payment is subject to the following:

- **Your Excess Period** (as stated on **Your Certificate of Insurance);** and
- **Your Waiting Period** (as stated on **Your Certificate of Insurance);** or
- **You** are detained in **Hospital** under the sole request of a **Doctor** or **Consultant** for seven consecutive days.

…

9. DISABILITY EXCLUSIONS

No **Monthly Benefit** will be payable to **You** if:

…

- **Your Disability** results from any **Condition** which came about as a result of a **Pre-Existing Condition** or **Chronic Condition** (but this exclusion will not apply to a **Pre-Existing Condition** if **You** have been free from its symptoms, and have not consulted any **Doctor** nor received any treatment for or in connection with it, for a two year period prior to **Your** claim); or

  …

- **You** were aware of **Your** impending **Disability** on or prior to the **Start Date** of **Your Certificate of Insurance**"

Nævnet udtaler:
Efter sin gennemgang af sagen finder nævnet at måtte lægge til grund, at klageren ikke er i stand til at arbejde grundet en lidelse, som bestod inden forsikringens ikrafttræden, og som klageren modtog behandling for inden for en periode af to år forud for skade-anmeldelsen. Nævnet kan derfor ikke kritisere, at selskabet har afvist at yde forsikrings-dækning som sket.

Som følger heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson