887/12

Den 29. februar 2012 blev i sag nr. 80.878:

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mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har arbejdsløshedsforsikring i Alpha Insurance A/S. Hun klager over selskabets afvisning af at yde forsikringsdækning for en periode, hvor hun var sygemeldt.

Klageren har anmeldt, at hun som følge af en forvredet ankel den 6/10 2010 blev sygemeldt fra sit job som stewardesse. Klageren var sygemeldt frem til marts 2011 og anmodede efterfølgende om udbetaling af ydelser for perioden med sygdomsfravær på i alt GBP 4.391,25. Selskabet har afvist dækning med henvisning til, at klageren ikke har bevist sit krav.

Klageren har i klageskemaet bl.a. anført:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.
> In 2002 I took out the Mortgage Protection policy. As I am airline cabin crew + should I suffer an illness or injury + am unable to fly I lose a large percentage of my take home pay as it is part made up of flight pay + numerous different allowances which I don't receive when not flying. In 2003+2005 the policy paid out in full from day one as I was off for more than 21 days. (I understand this has now changed to 30 days). The forms were completed + monies paid to me on a monthly basis on receipt of updated Dr.s report. This has set a precedent for

the future claims the company has been taken over twice + I have letters clearly stating that /cont'd.

2. What specifically is it you want the insurance company to do? (must be filled in).
To pay monies owed to me from the policy which has had no changes to it since inception. These are as follows:

918 x 4 = £ 3672.00 (Nov.-Feb.)
16 x 30.18 = £ 482.89 (part payment for Oct.)
14 x 30.18 = £ 422.52 (part payment for March)
Less £ 186.16 (payment from …)
I am therefore owed £ 4391.25."

Selskabet har i brev af 2/9 2011 heroverfor bl.a. anført:

"Alpha Insurance A/S (Alpha) has provided Mortgage Payment protection insurance to [klager] since 15th June 2009 in accordance with the policy terms and conditions attached (...). We believe that these terms and conditions are identical to the cover [klager] enjoyed with her previous insurers (attachment ...), with the exception of the clauses relating to the Initial Exclusion Period for Unemployment and pre-Existing Medical Conditions. Both those clauses were applied from the date cover was initially effected, rather than from the start date of our contract with her.

[Klager] sent a letter of complaint to Alpha Insurance A/S in March of 2011, attachment ..., querying the treatment of her claim by Alpha's appointed administrators, … and Alpha replied to the complaint in a letter dated 31st March 2011, attachment ...

The letter enclosed here as attachment ... clearly explains the reasons why [klagers] claim has been treated as it has. We, and our administrators … have followed the terms and conditions of her insurance policy precisely in calculating the amount of Monthly Benefit payable (see … letter to [klager] of 1st February 2011 showing the calculation, attachment ...) and she has received the relevant payment up to the end of December 2010 accordingly.

In her complaint, sent to Ankenævnet for Forsikring, [klager] refers to previous claims from 2003 and 2005. Alpha has no knowledge of these claims since they are outside the period of our coverage. These earlier claims must have been dealt with by [klagers] former insurance company Assurant.

Alpha Insurance A/S has no connection with Assurant and we have no way of ascertaining if the claims [klager] made in 2003 or 2005 were at all similar to that which has been submitted under her insurance contract with us. Neither can we comment on the amount of benefit paid to [klager] by her former insurance company. We have no access to the paperwork showing the amount paid or the method whereby Assurant calculated the benefits paid to [klager] at the time those earlier claims were made. In any event we do not consider that any precedent can have been set by Assurant that can in any way influence the separate written contract between ourselves and [klager].

[Klager] appears to be of the mistaken opinion that her insurance policy entitles her to a monthly benefit in the fixed amount of GBP 918 per month whenever she is off work due to sickness. It is difficult to ascertain why [klager] believes this to be the case, since this is not what is written in the insurance policy Alpha has provided to her (or indeed in her previous policy). If [klager] believes that this was promised to her back in 2002 and that she has been

mis-sold her insurance policy, this is a matter that she will have to take up with the company that sold her the initial policy. Alpha has never offered or provided [klager] with coverage on those terms.

This insurance policy, only pays claims when the policyholder that is sick receives less than 65% of their Gross Monthly Income from their employers. In addition, all benefits that would otherwise be available, over and above 65% of Gross Monthly Income are deducted in the event of a claim. [Klager] received sick pay of more than 65% of her salary for much of her time away from work and the benefit payable to her is thus minimal (see attachment … for details of the calculation of benefit.)

It appears from the complaint form that [klager] was off work into March 2011. She has received payment from Alpha via … up to the end of December 2010. As stated in the letter from … (attachment ...), in order for the amount of benefit that [klager] is entitled to on an on-going basis to be calculated, she needs to provide a copy of her pay-slip for the relevant month. Therefore, if [klager] believes that benefit is due to her for the period from January-March 2011, she needs to supply copies of her pay slips for that period and we will be happy to calculate whether any additional benefit is due, and if so, to make payment accordingly.

[Klagers] claim for GBP 4,391.25 is hereby rejected. As stated, we are however happy to see if any further benefit is due to her for the period from January - March 2011 upon the provision of relevant documentation."

Klageren har efterfølgende fremsendt et udateret brev til nævnet med forskellige dokumenter i sagen.

Selskabet har i brev af 11/10 2011 til nævnet heroverfor bl.a. anført:

"With that letter you have enclosed further documentation supplied by [klager], including a 'Mortgage Protection Plan Policy Document' from 2002 underwritten by a company named … Insurance Company Limited'. Alpha Insurance A/S (Alpha) has no knowledge of or connection with that company.

[Klager] apparently made claims under that insurance policy in 2003 and 2005 and in 2003 she demonstrates that she received payment of an amount equivalent to the monthly benefit selected, being GBP 684.

It is impossible for us to know if [klager] was in receipt of her usual salary, or part of her salary at the time she submitted her claims in 2003 and 2005. What is clear is that the policy wording for the product supplied to [klager] by …l Insurance Company Limited is different to the policy she currently has with Alpha and payment of her previous claims may therefore well have been made on a different basis to that applicable to her current policy with Alpha.

Alpha has no knowledge of the history of [klagers] policy and no liability to her under any policy other than the one she has with us. That is the full extent of the contract between us. We have demonstrated in the documents supplied with our letter of 2nd September 2011 that Alpha Insurance A/S has insured [klager] only since 15th June 2009, in accordance with the copy policy supplied as Attachment .. thereto. At the time that we became [klagers] insurers she was sent a letter, a policy Schedule and the Policy Wording itself. Copies of all of these

documents have already been supplied in connection with this complaint either by Alpha Insurance A/S or [klager].

The only assurance [klager] was given at the time we became her insurers was that the terms and conditions in our policy were the same as those of her existing cover at that time and we have already supplied a copy of the policy preceding ours, demonstrating that the terms and conditions remained the same.

Moreover, as you can see from the attached, we have highlighted relevant text in the copy letters sent to [klager] on 21st May 2009, prior to our becoming her insurers, which clearly state that [klager] was required to ensure that the policy supplied was still suitable for her demands and needs and she was asked to read the policy to ensure all details were correct.

It is plain that the policy supplied from 2002 is different to the policy provided by Alpha in 2009, but it is impossible to tell exactly when or who changed that policy or what information [klager] was provided with at the time the changes were made. If [klager] feels that she has a complaint with regard to any such changes, she must direct that complaint to the company responsible.

As far as Alpha Insurance A/S is concerned, we have dealt with [klagers] claim in complete accordance with the terms and conditions of the insurance policy she has with our company and her claim for GBP 4,391.25 is rejected."

Klageren har i udateret brev til nævnet heroverfor bl.a. bemærket:

"Your policy terms+conditions, as well as your monthly premiums remain the same'. (please see enclosed).

On 5/10/2010 I had to go sick due to a serious ankle injury. I sent all relevant information and forms to … and expected to receive £ 918 due to a restructuring of loss of earnings calculations."

Selskabet har i brev af 27/10 2011 til nævnet til dette bl.a. bemærket:

"The latest comments provided by [klager] have already been replied to in full in our letter dated 11th October 2011.

Alpha has no liability to [klager] under any insurance policy other than the one she has with our company. The terms and conditions in our policy were the same as those of her previous policy and we have provided documentary evidence of this.

If [klager] has a complaint with regard to any changes that have been made in her insurance coverage prior to our involvement then she needs to identify when such changes were made and direct her complaint to the company responsible for those changes.

We agree that the case can be determined on the basis of the information and documentation already provided."

Af forsikringsbetingelserne fremgår det bl.a.:

"**1. Introduction**

> This document outlines the details of the Mortgage Payment Protection Insurance policy. The Policy provides cover if You become Incapacitated, Hospitalsed or Involuntarily Unemployed. However, You are only covered as long as You meet the conditions of eligibility described below and You have paid the required premium.
> …
> The maximum Monthly Benefit payable for Mortgage and Income Protection under the Policy is £1500 or 65% of Your Gross Monthly Income or 150% of Your mortgage payment and related insurance premium whichever is the lesser. In addition, the maximum Monthly Benefit allowed under all similar insurances (including this insurance) is 65% of Gross Monthly Income less any other form of income including payments in lieu of notice and employers' sick pay but excluding state benefits. All benefits over 65% of Gross Monthly Income will be deducted in the event of a claim."

Nævnet udtaler:

Nævnet finder at kunne lægge til grund, at klagerens arbejdsløshedsforsikring siden 2002 har været tegnet i forskellige forsikringsselskaber. Så vidt det ses er selskabsskiftene sket på foranledning af forskellige forsikringsmæglere eller forsikringsagenter (tied agents). Et forsikringsselskab hæfter ikke for en forsikringsmæglers fejl, derimod kan det godt efter omstændighederne komme til at hæfte for fejl begået af forsikringsagenter.

Uanset om Towergate måtte være forsikringsmægler, (hvad nævnet mener er tilfældet), eller forsikringsagent, er ændringen i dækningsomfanget ikke sket ved skift til Alpha Insurance A/S, men må være sket på et tidligere tidspunkt. Nævnet kan derfor ikke pålægge Alpha Insurance A/S at opgøre erstatningskravet anderledes end sket.

Nævnet bemærker, at det falder uden for nævnets kompetence at behandle en klage over en engelsk forsikringsmægler.

Derfor

b e s t e m m e s :

Klageren får ikke medhold.

Marianne Højgaard Pedersen
formand

udskriften bekræftes

Henning Jønsson