Ankenævnet for Forsikring

893/12

Den 29. maj 2012 blev i sag nr. 81.160:

xxxxx xxxxxxxxxxxx
xx xxxxxxxx xxxxx
xxxxxxx xxxxx xxxx xxxxxx
xxxx xxx
xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren, der er bosiddende i England, har tegnet "Combined Vehicle Replacement Insurance and Finance GAP Insurance" i Alpa Insurance A/S. Hun klager over selskabets erstatningsopgørelse i forbindelse med et anmeldt tyveri af den forsikrede bil, en Mercedes-Benz SLK 300.

Selskabet henviser til, at klageren ikke har godtgjort, at hun har krav på yderligere erstatning end allerede tilbudt.

Klagen over selskabet er oprindelig indgivet til Financial Ombudsman Service i England. Efterfølgende er den via FIN-NET videresendt til Ankenævnet for Forsikring, som har modtaget klagen den 2/9 2011.

I det klageskema, som klageren har udfyldt i forbindelse med sagens fremsendelse til Financial Ombudsman Service, hedder det bl.a.:

"**please tell us what your complaint is about**

I took a new car on a personal contract lease (PCP) and was told I should have insurance to cover the car if it got written off to protect me. I was sold the motor insurance by the

2. 81.160

Mercedes Benz garage Lookers of Brighton and also GAP / vehicle replacement cover at a cost of £1000.

Following the theft of my car on 22/3/2011 (and my husband's at the same time) from our house I claimed off the policy. For anyone who has been broken into in the night and had thieves walking around their house while they are asleep, it is a very stressful time anyway to think what could have happened. You would think the insurers would be more considerate.

The car is no longer made and has been replaced by a brand new model with a new shape and new engine and this is much more expensive. There is a waiting time of approx 5 months for a new car.

The gap insurer took ages to deal with the claim and I had to rent another car while still paying for the lease. The gap insurer Alpha refused to pay out saying that in the policy there was a clause that said I had to replace the car - even though it was no longer made. As I could not; they refused to pay. I did not understand this clause as it is jargon so I looked it up on the internet. R is designed to pay out extra money if the car costs more to replace (easygap.co.uk is the example) but they used it to refuse to pay out. The clause they used is not mentioned at all in the key facts. I was not to know how this clause works as it is jargon and I did not know it was there as it was not mentioned in the key facts. The key facts said 'do you want the motor insurer to pay out the replacement cost' - the answer says no, so why was I sold one that suggested I had to?

I complained to Lookers, Mercedes Benz, Alpha insurance and none of them have followed the complaint rules. They have now only partly paid out and have not paid any extra for the stress and delays. They also said that the wrong amount was paid by Aviva - how am I supposed to know that, I don't work in car sales and it's one insurance company against another - I should not have to be an expert, if Aviva have paid the wrong amount - are they con artists as well? Alpha should pay out as per the policy and cover the extra cost for the nearest like for like car. If Aviva have not paid enough, Alpha should tell them and get the extra money not me. I have no idea why but they sent me a report saying it was worth £29375 provisionally and then only said it was worth £28000. With all the stress I was under it is disgusting that they are all trying to rip me off!

If it was not for my husband, I would not have been able to deal with this as I have been signed off work with stress and had to have counselling now.

…

• What do you want the business you're complaining about to do, to put things right for you?

Pay the full money the policy says I should get- the cost of the nearest like for like brand new car of £46225 Pay compensation for stress & the cost of hiring a car©£395pm while still paying for the lease. Say sorry. Remove the condition from the policy as it's unfair. Stop lying to customers about how the policy works.

please give us any other details that you think will help us understand your complaint.

3. 81.160

I work for a hospital so I don't understand insurance. I was told this policy was the Platinum of insurance. On the internet is shows how this should work but they have used this to try not to pay out. http://easygap.co.uk/17/vehiclereplacementinsurance/
I think this is a disgrace. I have had to have time off work due to the stress of this and it has ruined my life for the past 2 months and all over the bank holidays. My husband has also had many sleepless nights and it has put a lot of tension in the family. He had to lend me money and do a remortgage in order to get me a new car. I work in sales so I have to have a car every day or I can't work.

The stupid thing is this is a lease - I did not even own the car so I paid £10000 up front and then £515 a month and they were going to tell me I had to wait 6 months for a new car to be made. You would not rent a car from Enterprise and pay them the money and them say - sorry it's just being built it will turn up in 6 months - this is no different, a lease is like a rental!

I had to get my husband to contact these people and spend hours talking to them and sending e-mails to chase them up.

How can insurance be sold on one basis and this turn out to be lies - this is criminal and not what I expected from Mercedes Benz!

I don't know who is at fault but someone must be. I should either of had:

1) The money or a brand new replacement from Aviva and a car to use while it took 6 months for the new one to turn up
2) The full amount under the gap policy from Alpha = £46225 - 37059 = £9166 extra
3) Compensation from miss-selling by Lookers / Mercedes Benz

All the things they have done is not fair and as a customer I can't believe they are allowed to treat me like this. They have not even explained anything. I thought we had rules in this country to stop this type of thing - they should be fined as well for lying and cheating. Is it any wonder people think insurance is such a waste of time and think they are all fraudsters!"

Af det skema, som er udfyldt i forbindelse med sagens videresendelse til Ankenævnet for Forsikring via FIN-NET, fremgår bl.a.:

"**Information about your complaint**

Brief summary of what the complaint is about	**Feels GAP Insurance didn't cover her fully**"

Selskabet har i brev af 15/9 2011 til nævnet redegjort for sagen og sin afgørelse således:

"On 22nd March 2011 both [klagerens] vehicle and that belonging to her husband were stolen from outside their home, thieves having been inside their home while they were asleep. Clearly this must have been a traumatic experience for the couple and we have the greatest sympathy for the distress this must have caused them.

…

Under Section 2. of the policy document the insurance is explained: 'This insurance is designed to pay for the financial shortfall between the **Insured Value** in the event of **Your Insured Vehicle** being a **Total Loss** following accidental damage, fire or theft and the

greater of either the cost of a **Replacement Vehicle** or, if greater, **Your Finance Settlement,** up to the maximum stated in **Your** Policy Schedule. The payment of any shortfall is subject to terms and conditions.'

The conditions referred to are set out in Section 10 and in particular:
i) Any payment of benefit under this Policy is conditional upon **You** being insured under a **Motor Insurance Policy.**
ii) If **You** decline the offer of a replacement vehicle under the terms of the **Motor Insurance Policy** then **We** will settle the claim based on the value of the replacement vehicle and not the settlement figure offered under the **Motor Insurance Policy.** Note, this may result in no benefit being paid.
iii) If **You** accept an offer of settlement from the underwriters of the **Motor Insurance Policy** of less than the current market value of the vehicle then **We** reserve the right to assess the loss at the current market value of the vehicle by reference to Glass's Guide Retail value at the **Date of Loss.'**

The loss of [klagerens] vehicle took place on 22nd March 2011 and payment of the amount we have calculated as being due under [klagerens] insurance policy with Alpha Insurance A/S was made on 17th May 2011.

The claim was first advised to our agents on 23rd March 2011, when a claim form was immediately dispatched. On 29th March 2011 Premia Solutions Limited acknowledged receipt of the claim form. [Klageren] received confirmation that she would receive £27,850 from her motor insurers, Aviva, on 1st April 2011.

By letter dated 19th April 2009 Premia Solutions Limited declined the claim presented under the Alpha Insurance A/S policy, since it appeared that [klageren] had refused the offer of a replacement vehicle from her motor insurance provider. This assumption was based upon a telephone conversation with [klageren], where she informed Premia Solutions Limited that she did not want a replacement vehicle from her insurers, since she did not wish to be targeted by thieves again.

[Klageren] accepted the payment from her motor insurers of £27,850. According to Glass's Guide (copy already supplied by [klageren]) the retail value of [klagerens] vehicle at the date of loss was however £29,375. On Page 3 of her complaint form [klageren] writes, 'I have no idea why but they sent me a report saying it was worth £29,375 provisionally and then only said it was worth £28,000'. It is most unfortunate that [klageren] did not use the Glass's Guide valuation to insist that Aviva paid her the higher amount in compensation. The UK Financial Ombudsman Service, under which regime Aviva operates, has rules governing vehicle valuations and it may well be that [klageren] can pursue a claim against Aviva in this respect.

Under the GAP policy Alpha Insurance A/S is entitled to use the Glass's Guide retail value figure when calculating any loss sustained by [klageren], in circumstances where a replacement vehicle has been refused. Therefore the conclusion was reached that no payment was due.

The rejection letter sent out by Premia Solutions Limited resulted in … [klagerens ægtefælle] sending the first of many e-mails directly to Alpha Insurance A/S. The first e-mail was received alter working hours on the eve of the Easter Bank Holidays and it was therefore not possible to send an acknowledgment before 26th April 2011 (Attachment 2.)

5. 81.160

Investigations into the matter were commenced immediately and the crux of this claim was whether or not a replacement vehicle had in fact been offered to and rejected by [klageren]. This is obviously a matter that required the involvement of the motor insurers, but regrettably they were not co-operative.

An e-mail supplied to … [klagerens ægtefælle] by Aviva on 27th April (Attachment 3.) indicating that new vehicle replacement was not applicable on this claim as the vehicle was no longer made, is directly contradicted by information we had available, as confirmed in an e-mail supplied to our representatives by car dealers Mercedes-Benz of Oxford on 6th May 2011 and forwarded to Alpha on 10th May 2011 (Attachment 4.) There were in fact no less than 12 available replacement cars in March 2011 and two of these were still unsold on 6th May 2011.

This prompted further investigations being necessary into whether a replacement vehicle was indeed ever offered by Aviva to [klageren], what her response was and the reason why a replacement vehicle may not have been offered. Repeated requests were made to the Aviva brokers, Daimler Insurance Services UK Limited (see e-mail string Attachment 5), to obtain replies to these queries, but nothing was received after the email of 13th May 2011.

At the same time as Alpha Insurance A/S was conducting our investigation into these matters with the motor insurers and their representatives, … [klagerens ægtefælle] sent repeated e-mails to Alpha Insurance A/S regarding his wife's claim. As illustrated in our e-mail dated 13th May 2011 (included in e-mail string in Attachment 6), all approaches to Alpha were dealt with promptly.

As soon as it became clear to us that the motor insurers did not intend to properly assist in our enquiries, Alpha Insurance A/S reached the conclusion that, [klageren] may not have been offered a replacement vehicle by her motor insurers and in those circumstances there was a valid GAP claim under her insurance with Alpha Insurance A/S.

Under Condition 10 x) of her policy the amount due to [klageren] in these circumstances is as follows:

'If **You** elect not to take a **Replacement Vehicle We** will pay back to the **Net Invoice Selling Price.'**

The amount payable is thus the difference between the market value of the vehicle, which should have been paid to [klageren] under her motor insurance policy, and the net invoice selling price of the vehicle.

The net invoice selling price of this vehicle including VAT was £37,059.16 and according to the Glass's valuation £29,375 should be deducted in reaching the amount payable, resulting in an amount of £7,684.16 due to [klageren].

In this case [klageren] was in fact paid the amount of £9,209.16 in compensation by Alpha Insurance A/S on 17th May 2011 (see Attachment 6). Instead of using the Glass's valuation, we only deducted the actual payment received from Aviva in calculating the compensation due. The additional £1,525 paid to [klageren] was in compensation for stress suffered.

Alpha Insurance A/S is therefore of the firm belief that we have in fact already compensated [klageren] in full under her policy with us and we have provided additional compensation in the amount of £1,525.

The cost of the nearest like for like brand new car of £46,225.

[Klageren] would like Alpha Insurance A/S to provide further compensation in the amount of £9,166 because the car model that was stolen is no longer in production and the nearest replacement vehicle is sold for £46,225.

This claim is completely unfounded.

Firstly, because [klageren] made it clear to our representatives that she did not require a replacement vehicle.

Secondly, because Alpha Insurance A/S has already paid full compensation under [klagerens] insurance policy with us and

Thirdly, because there were in fact many replacement vehicles in the original model available at the time of the theft (see Attachment 4).

Pay compensation for stress & the cost of hiring a car @£395pm while still paying for the lease.

The loss of [klagerens] car in the circumstances of this theft was undoubtedly a traumatic experience. However, Alpha Insurance A/S has no responsibility to [klageren] for any stress caused by her unfortunate experience over and above ensuring that her claim has been dealt with fairly, promptly and professionally. The car was stolen on 22nd March 2011 and we paid compensation under the GAP policy on 17th May 2011.

A payment of £1,525 over and above the actual sum due under her policy has already been paid to [klageren].

Consequential losses, for example car-hire costs, are not included under the GAP insurance policy and are therefore not payable by Alpha Insurance A/S.

It is unclear what length of time [klageren] is referring to as far as car-hire costs are concerned, since it appears that the lease was paid off in advance of Alpha paying the claim under the GAP insurance. … [klagerens ægtefælle] advised in his e-mail of 15th May 2011 (in email string under Attachment 6) that 2 weeks car hire was actually provided to [klageren] in connection with the loss of her car, although it is not clear which company actually paid for this car-hire. In that e-mail from 15th May, … [klagerens ægtefælle] appears to be suggesting that Mercedez should have provided [klageren] with a loan car and this is therefore a matter he should take up with Mercedez Benz and is not a matter for Alpha Insurance A/S to reply to.

Say sorry.

Every company that [klageren] has dealt with in the aftermath of the theft of her car has expressed their sympathy with her. In the very first e-mail sent by Alpha Insurance A/S on 26th April 2011 (Attachment 2.) our Chief Operating Officer, …, writes 'sorry' twice - once for the delay in our reply due to the Easter break and once again for the bad experience suffered.

We are very sorry for any distress caused to [klageren], but we honestly believe we have illustrated that the claim has been investigated as professionally and promptly as possible.

Settlement was made within 2 months of the loss and an additional payment has been made over and above our contractual obligation.

Remove the condition from the policy as it's unfair. Stop lying to customers about how the policy works.

It is not clear exactly what condition [klageren] is referring to as being unfair. From the text of her complaint we assume that she is unhappy that we have not agreed to pay compensation up to the value of the newer model of her vehicle, but this aspect has been replied to in full above.

The terms and conditions of our policy are fair and reasonable and we have no interest in 'lying to customers about how the policy works'. When dealing with claims from our insureds we do however have to refer our customers to the precise wording of their own insurance policy with us and not to random information obtained from searching the Internet.

Conclusion

There are various other comments and matters of complaint referred to by [klageren] in her complaint form and these are addressed to various parties and not just Alpha Insurance A/S. For example on Page 4 of the completed form [klageren] states that she should either have had:
1) The money or a brand new replacement from Aviva and a car to use while it took 6 months for the new one to turn up.
2) The full amount under the gap policy from Alpha = £46,225 - 37059 = £9166 extra
3) Compensation from mis-selling by Lookers / Mercedez Benz

Item 1) is a matter for Aviva to deal with and this complaint should be directed to them through the UK FOS. We have however demonstrated that there were in fad many suitable replacement cars available immediately at the time of this loss and if [klageren] had wanted a replacement vehicle it was not necessary for Aviva to have supplied her with the new model or a hire-vehicle.

Item 2) has been dealt with in detail above and [klageren] has already been compensated 'fully' by Alpha Insurance A/S.

Item 3) These are matters for Lookers / Mercedez Benz and any complaint for mis-selling should be directed to them.

Alpha Insurance A/S firmly believes that this claim has been dealt with in a proper, timely and professional manner and we maintain that [klagerens] claim has already been settled in full."

Nævnet har den 13/10 2011 fra klageren modtaget brev, der er affattet af hendes ægtefælle. Af brevet fremgår:

"I have reviewed the points raised by the Insurer. I have assisted [klageren] in the review of the letter due to the many technical points which she finds difficult to understand. At first glance, it may appear to you that we are being unreasonable and Alpha have tried to set out that they have been very fair and in fact generous in their handling. This is very much not the case and what is important to remember is that [klageren] is just an ordinary person with no knowledge of financial services, law or the motor industry, the contentions set out in their

response tend to suggest that she is at fault for not using expert knowledge of the insurance practices, car price guide and contract law.

My first assertion is that it is not clear the basis on which the review will take place. The understanding would be that as the contract is written in English and sold in England to a UK citizen, that [klageren] will not be prejudiced by rules relating to the handling of the decision being based on premises for which she could expect to have no understanding - that is under Danish codes, law and principles. If it is the case that the decision will be based on Danish principles, please could you provide an English translation of these be sent for me to review so that I may understand the nature in which the case will be reviewed.

Points of contention:

1) The insurer has chosen only to refer to conditions which are purportedly in their favour. The contract is full of contradictions, legalese and conflicts. In UK law, where a contract contains conflicts, these are set aside in the favour of the contract holder rather than the party which drafted the contract. I believe that where such contradictions persist, they must be set aside in order to comply with rules relating to a contract having to be 'Clear and fair and not misleading'. Conditions in section 10 contradict those elsewhere and are not even in correct English. Specifically, clause 7 states that where the car is no longer made, the next equivalent will be the basis of the claim.
2) Glass's guide is a motor industry guide used only by the professional motor industry. Each copy costs in excess of £1000 and is not available in the retail market. [Klageren], as a layperson, has no knowledge of this guide, how it works, nor access to its content. She is not required to have expert knowledge of the motor industry in order to benefit from a UK principle called 'Treating your customer fairly'. This principle has been broken as they are expecting her to have expert knowledge. At no point did she accept the valuation from Aviva, she specifically told them that that was a matter between them and Alpha. It is just that Alpha refused to pay so Aviva chose to make settlement as they had no other option.
3) The cars which were purportedly for sale are those which Premia asked Mercedes to review. In this they specifically said, apply the maximum discount to the price so that you are making no profit. This is not the price for which [klageren] would have been able to buy a car, they are net of profit prices and are therefore not pertinent to the true cost of replacement. Notwithstanding this, Aviva, who were the insurer to which this duty would have fallen, have stated to [klageren] that they would have sourced the car from other means and that none were available. The policy conditions also states it must be from the UK and when they checked, none were available.
4) In relation to the alleged ability to replace the car, Alpha has ignored that the alternatives cars were not to the same specification, they have only chosen to say that the same 'type' of car was available. The car that was closest to the specification was not the same colour and did not have the same factory fitted options. One would not expect to buy a brand new car to a specification and then be told, sorry to have to now drive a car that you did not ask for; if you buy a silver car with a grey roof, you do not expect to have it replaced by a black car with a black roof. This point must therefore be set aside as the replacement car had to come from Aviva and they have stated in an e-mail, which is binding, that they did not have access to a replacement and that the conditions in their policy were not met.
5) Clause 10x cannot be relied upon. I have already stated how this clause is written in such a way as to be impossible to understand. In conversation with Mercedes, supposed car experts, they read the clause 3 times over the phone to me and then said 'sorry I just don't understand this clause'. What is important is that [klageren] was

asked what she wanted to do on the day of the accident before she had been able to read the policy, talk to Alpha or Premia and was in severe shock! She was not told that even if she did want to replace the car, it would not have been possible. As soon as it was explained to her that she could have one (alleged) she went back to them and they then confirmed that it was irrelevant and if she now wanted one it did not matter as one would never have been available in the first place. So, in effect [klageren] has not rejected a replacement car, in fact she would have loved a replacement in the new shape but this has never been offered. On the basis that she did not reject a new car, this clause cannot be relied upon.

6) The information relating to the so called 'random information from the internet' is in fact expert witness information to assist with handling the complaint. It shows that the market practice is in fact very different to that observed by Alpha. There are many other examples and I have researched including policies from Axa, Porsche, Aviva and BMW with whom I have also been in contact. Please note, I did NOT take a replacement BMW when mine was stolen. I did get the full settlement from BMW gap, I did NOT have to take a new
7) For some reason Alpha has misunderstood the hire car position. The hire car from Aviva was provided for 2 weeks. I had to hire car for [klageren] for the remaining time at my own expense. [Klageren] was not in a position without financial assistance (and at cost) from myself to purchase a replacement car for 2 months. If she had ordered a replacement car, the order would have taken 6 months. In effect, she would have been renting (as she had not bought the car but was leasing it) a car for 6 months and not have use of it! If you hired a car from Hertz and then it got stolen, they would not turn round and say you had to carry on paying for 6 months while they ordered a replacement, no - they would replace the car immediately. Why is this any different; [klageren] had not bought this car but was leasing it and was not the legal owner.

Our final statement is that when dealing with this, [klageren] is an innocent person who had her house violated, car stolen and then had to borrow money to pay off the car and had no idea when or if she would have the ban paid off so that she could replace the car. She only wants what she paid a lot of money for in the insurance; to be treated fairly and have the true cost repaid. If that does not happen, she has been a further victim on top of the theft."

Herefter har selskabet i brev af 28/10 2011 til nævnet anført:

"1. The policy provided to [klageren] by Alpha is a standard UK market product and we completely disagree with … [klagerens ægtefælles] comments that it is contradictory. In particular with regard to Clause 7, we have already demonstrated that there were several of the same model as [klagerens] vehicle available at the time of this loss.

Please note that the Mercedes dealership selling the insurance, at the point of sale of the car, was under strict instructions to explain the cover afforded by the policy and, equally important, to explain the restrictions and specific exclusions of the policy.

When [klageren] purchased her vehicle and the insurance policy provided by Alpha, the cover provided was carefully explained to her by the salesman and the Demands and Needs procedure was followed.

Please find attached hereto a copy of the Handover Check List, Statement of Needs and Demands, New Vehicle Invoice, Supplementary Invoice, Vehicle order form, Hire Purchase Agreement, Policy Schedule and Document and Key Facts sheet. [Klageren] signed the Statement of Demands and Needs to confirm she understood what she was buying.

2. Glass's Guide, as well as being the recognised trade valuation publication, is also readily available to the general public. It is possible to go on to the internet and for a fee of £3.95 obtain exactly the same information about a car as is available to a motor dealer. However, in this case, [klageren] was actually supplied with a copy of the relevant valuation for her vehicle by Aviva, prior to their settlement of her claim under her motor policy. No expert knowledge was therefore expected of her.

It was not possible for Alpha to consider the GAP claim until the motor insurers, Aviva, had determined that the car was a total loss and they had settled the motor claim under the terms of their policy. Alpha was in no way instrumental in any delay in settlement by the motor insurers.

3. The claims administrator Premia simply made enquiries with Mercedes as to the availability of a similar model to the car stolen at any of their dealerships in the UK. At the time there were 12 cars of the same Model and Derivative as the stolen vehicle available in national stock. Indeed in May there were still 2 left. Premia would have, as always, asked for a discounted price, as that is what they are required to do, and Lookers were willing to supply one of these cars at the price quoted. The vehicles may have been slightly different in terms of accessories and colour but would have been the 'nearest equivalent'.

It was for this reason that Aviva were asked whether they made any attempt to replace the car under the terms of their motor insurance contract, or whether they ignored those terms and simply offered cash, or whether they were specifically asked to settle for cash by [klageren]. It is our opinion that Aviva should have offered the cost of a replacement new vehicle at the time of loss and not what they considered to be market value, which would have been consistent with the guidance issued in the UK by the FOS in July 2008 in respect of new for old vehicles as detailed below (highlight added). (http://www.financial-ombudsman.org.uk/publications/technical notes/motorvaluation.html):

(10. 'new for old' seldom applies
Most motor insurance policies require the insurer to provide a new replacement only where the vehicle is written-off within a specified time - typically within 12 months - after the date of first registration. After that, motor insurance policies rarely require the insurer to provide a new replacement. Where the vehicle was pre-registered by the dealer before sale, we usually treat the vehicle as if it was first registered when it was first sold.
Disputes can arise about this where the 'new vehicle provision' says that the insurer is only liable to provide a new vehicle if the same make and model (and sometimes specification) is still available in the UK market. **We are likely to consider it unfair for the insurer to pay less than what it would have cost the insurer to replace the vehicle with a new one if it had been available.)**

4. In our Gap policy the term 'nearest equivalent' is used. In addition the payment we have already made to [klageren] compensates her in full for the loss of her specific vehicle.

5. We disagree. Aviva have confirmed that under the terms of their motor insurance policy they were duty bound to offer a replacement car if there was one available. They have never confirmed to our claims administrator or Alpha, one way or the other, whether the offer of a replacement car was ever made by them and if that offer was then refused by [klageren].

Our policy clearly states that if an insured is offered a replacement vehicle by their motor insurers and that offer is refused then Alpha has the right to take the value of the

replacement car when calculating the quantum of the claim. This would have been explained to [klageren] as part of the Demands and Needs process carried out by the motor dealer.

There was no 'accident' in this case. [Klagerens] car was stolen. Naturally she contacted her insurance company immediately, but it is normal in such cases for there to be a waiting period to see if the car is recovered before an insurance claim is paid. In Denmark the normal waiting period is in fact four weeks from the date of the incident.

In this case the car was stolen on 2nd March 2011 and already on 1st April [klagerens] motor insurers confirmed the payment they would be making to her. It is clear that [klageren] actively sought to expedite payment of her claim faster than normal. Nevertheless, it was her duty to study the terms of her insurance policy and Gap insurance prior to her acceptance of the settlement.

6. As far as we are aware … [klagerens ægtefælle] had a different type of policy covering his vehicle. In any event he did not have a Vehicle Replacement Insurance and Gap policy with Alpha. We are bound by the terms and conditions of our specific policy and we cannot comment on the specifics of other companies' terms and conditions.

7. The Alpha policy clearly states under clause 11. x) that the insurance does not cover any claim in respect of loss of use of the Insured Vehicle or any consequential loss whatsoever. Therefore there can be no question of car-hire being due to [klageren] under this policy.

We confirm that in our opinion [klageren] has been compensated in full under her insurance policy with Alpha and we await the decision of Ankenævnet for Forsikring in due course."

Efterfølgende har klageren til nævnet fremsendt brev af 3/11 2011 med yderligere kommentarer. Brevet er affattet af klagerens ægtefælle.

Nævnet har fået forelagt de bilag, som parterne har fremlagt.

Af forsikringsbetingelserne fremgår bl.a.:

"2. THE POLICY
...
This insurance is designed to pay for the financial shortfall between the Insured Value in the event of Your Insured Vehicle being a Total Loss following accidental damage, fire or theft and the greater of either the cost of a Replacement Vehicle or, if greater, Your Finance Settlement, up to the maximum stated in Your Policy Schedule. The payment of any shortfall is subject to terms and conditions.
…
7. DEFINITIONS
...
'Replacement Vehicle' means a replacement new or pre-registered vehicle of the same make, model and derivative as the **Insured Vehicle**, including all factory fitted accessories, but excluding road fund licence, new vehicle registration fee, fuel, paintwork and/or upholstery protection kits, insurance premiums (including this Premium), warranty premiums, finance arrears and any such associated costs and any **Negative Equity**. If that model is no longer available then the price of the nearest equivalent vehicle will be used.

…
10. CONDITIONS
i) Any payment of benefit under this Policy is conditional upon You being insured under a **Motor Insurance Policy.**
ii) If You decline the offer of a replacement vehicle under the terms of the Motor Insurance Policy then We will settle the claim, based on the value of the replacement vehicle and not the settlement figure offered under the Motor Insurance Policy. Note, this may result in no benefit being paid.
iii) If You accept an offer of settlement from the underwriters of the Motor Insurance Policy of less than the current market value of the vehicle then We reserve the right to assess the loss at the current market value of the vehicle by reference to Glass's Guide Retail value at the Date of Loss.
…
x) If You elect not to take a Replacement Vehicle We will pay back to the Net Invoice Selling Price.

11. WHAT IS NOT COVERED
This Insurance does not cover any claim.
…
x) in respect of loss of use of the Insured Vehicle or any consequential loss whatsoever.
…
18. THE LAW AND LANGUAGE APPLICABLE TO THE POLICY
The law of England and Wales will apply to this contract unless:
i) **You** and **we** agree otherwise, or
ii) At the commencement of this insurance **You** are resident of (or in case of a business, the registered office or principal place of business in situated in) Scotland, Northern Ireland, Channel Islands or the Isle of Man, in which case the law of that country will apply unless **You** and **We** agree otherwise.
The language used in this Policy and any communications relating to it will be English."

Nævnet udtaler:

På det foreliggende grundlag finder nævnet det ikke godtgjort af klageren, at hun har krav på yderligere erstatning fra det indklagede selskab. Nævnet kan således ikke kritisere selskabets erstatningsopgørelse. Efter det oplyste har nævnet heller ikke i øvrigt grundlag for at udtale kritik af selskabet.

Det bemærkes, at sagen er afgjort efter dansk ret, idet nævnet ikke kan afgøre sager efter fremmed ret. Nævnet har alene taget stilling til klagerens krav mod det indklagede forsikringsselskab, Alpha Insurance A/S. Endvidere er nævnets afgørelse affattet på

dansk. Nævnet kan ikke påtage sig at udforme afgørelsen på engelsk eller bekoste oversættelse af afgørelsen.

Med denne bemærkning

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson