Ankenævnet for Forsikring

895/12

Den 25. juni 2012 blev i sag nr. 81.579:

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xxxxxx xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har motorkøretøjsforsikring i Alpha Insurance A/S. Han klager over selskabets afvisning af, at forsikringen gælder i mere end tre år fra tegningstidspunktet.

Det fremgår af sagen, at klageren den 1/11 2010 købte en bil hos den britiske autoforhandler WVS Sales Ltd., og i den forbindelse tegnede en forsikring gennem den britiske mægler Motorcare Elite. Det indklagede selskab anfører, at det har givet den britiske mægler Kay International Ltd. fuldmagt til at tegne forsikringer på vegne af selskabet, og at Kay International Ldt. har videredelegeret opgaven til Motorcare Elite.

Af forsikringsbetingelserne fremgår, at forsikringen gælder, så længe klageren er ejer af bilen. Selskabet anfører, at aftalen ifølge selskabets oplysninger er begrænset til tre år fra tegningstidspunktet. Selskabet er samtidig af den overbevisning, at Motorcare Elite handlede svigagtigt ved salget af forsikringen og afviser derfor, at aftalen gælder i hele perioden for klagerens ejerskab af bilen. Selskabet har tilbudt klageren at annullere forsikringen og tilbagebetale hans præmie eller at opretholde den i en periode på tre år fra tegningstidspunktet. Klageren har afvist begge tilbud og mener i stedet, at selskabet skal anerkende, at forsikringen først udløber, når han afhænder den forsikrede bil.

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Klageren har i EU-klageskemaet for internationale forbrugertvister bl.a. anført:

"Brief summary of what the complaint is about

I purchased a car warranty on 2nd Nov 2010 and I was told that it would be valid for the full time that I owned the car. I am now being told that the policy will expire after 3 years from the date of purchase (1st Nov 2013)."

Selskabet har i brev af 13/12 2011 til nævnet heroverfor bl.a. anført:

"[Klagers] complaint is that he was sold a policy described to him as a 'life of ownership' policy, but Alpha Insurance A/S (Alpha) is only able to honour the policy for a maximum period of three years.

This is because Alpha does not issue 'life of ownership' policies. The longest period of insurance for Mechanical Breakdown insurance that we have authorised to be written is 36 months and according to the records in our possession, that is what was sold to [klager] by his car dealer WVC Sales Ltd. as agents of the firm Motorcare Elite (2008) Limited (Motorcare).

Background
Alpha has limited knowledge of the Motorcare scheme at this time, as it was operated under an International Agreement and on terms of authority that granted full administrative delegation from Alpha to a UK based scheme manager; Kay International Limited. Kay International made further delegation of the physical management of the scheme, policy issue and management and claims administration. The scheme was physically administered by Motorcare.

Motorcare marketed a wide range of Warranty and Financial Asset Protection (GAP) insurance policies via motor dealers in the United Kingdom (including Northern Ireland). It has been discovered that in conducting such business Motorcare has acted in what would appear to be a fraudulent manner, selling products outside its authorities and failing to record sales and remit policy documentation. The result of this is that a currently unknown number of contracts have been sold to consumers, which Alpha has no knowledge of and which may not be valid contracts.

Alpha has terminated the authorities of Kay International and we understand that Motorcare is no longer trading. Alpha has appointed a replacement administrator, AutoProtect, to deal with claims.

Alpha is working closely with the UK Financial Supervisory Authority (FSA) to establish the extent of this situation and the validity of sold contracts and we understand a Police investigation into possible fraud has commenced.

The rate paid for the policy
Please find enclosed as Attachment 1 hereto a copy of the Warranty Document issued to [klager] and as Attachment 2, the Insurance Schedule.

[Klager] has produced an invoice from WVC Sales Ltd. for £500 which is enclosed as Attachment 3. However, in the returns made to Alpha by Kay/Motorcare, we have found a partial record that shows in [klagers] case we received the sum of £73 +5% insurance premium tax (of £3.65) for a policy of 36 months duration, giving a £2,000 claim indemnity. If

correct, this means that [klager] paid no more than £76.65 in insurance premium to Alpha and that any sum above that amount paid would have been some form of 'fee' retained by the selling dealer and has nothing to do with the insurance transaction. The fact that the schedule sent to us (Attachment 2) shows a £0.00 premium reinforces this position. The correct rate per the binder rate card for 36 months of coverage on this type of vehicle should have been £267.00 plus IPT on retail.

This means that although [klager] has apparently paid the sum of £500 to his car dealer, Alpha has received a premium of far less than the amount that should have been paid for 36 months of coverage.

The discrepancy in the figures has been queried with the car dealer, but the firm has so far not been co-operative in providing assistance and has instead sent a solicitor's letter in reply. That line of enquiry has no direct bearing on [klagers] complaint against Alpha, except in so far as [klager] may be able to make a claim against the car dealer or Motorcare for a return of his payment to them, but we wish to make clear that Alpha is doing everything in our power to uncover the extent of the fraudulent actions taken by Motorcare.

Claim
In his complaint [klager] wants to obtain a 'life of ownership' policy, but this request is impossible for us to fulfill.

In correspondence directly with [klager] we have already explained the situation to him to the best of our ability (Attachment 4.) As explained therein, Alpha could have legitimately declared [klagers] policy void and returned to him the actual amount of premium we have received. In these circumstances we could also have asked [klager] to repay the two claims that have already been settled by Alpha under his policy.

However, we did not consider that voiding the policy would be the most reasonable position for us to adopt and we therefore decided to offer [klager] the maximum we would offer to any policyholder insuring with Alpha, being a 36 month policy from the stated inception date, based on the policy wording terms and conditions issued and without demanding the correct premium. This affords him full coverage for 36 months, no refund of the two claims already paid is relevant and we will naturally also deal with any further legitimate claims arising during the currency of the policy.

In the e-mail from 14th November, we indicated that if this offer was not acceptable to [klager] and he felt that Alpha had not treated him fairly, then he could, of course, make a complaint. Since such a complaint has now been lodged, we are uncertain whether [klager] wishes to take advantage of the 36 month policy offered or if he would, in fact, prefer Alpha to declare the policy void from inception and receive a return of the premium paid to us of £76.65. We would be grateful to receive clarification on this point.

Conclusion
Despite not having received the correct premium for coverage, Alpha Insurance A/S has already paid two claims under [klagers] warranty and we have offered him the maximum coverage available of 36 months from inception. We therefore believe that we have treated [klager] as fairly as possible in the circumstances and that his complaint against our company is not justified."

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Klageren har i mail af 4/1 2012 til selskabet, videresendt til nævnet, heroverfor bl.a. anført:

> "In your letter you state that you would like clarification on whether or not I accept your offer of maintaining the validity of the policy for 36 months or if I would prefer Alpha to declare the policy void. I of course would like Alpha to keep the policy running as indicated in my email to Ian Sadler dated 14th November 2011 (copy attached).
>
> However, I know that you understand that I was sold the policy on the basis that it was a 'life of ownership' policy. I paid 500 GBP to the car dealer for a life of ownership policy and I should either be given what I paid for, or I should get some refund. I do not wish to accept the situation as it stands, as it seems to me that some fraudulent actions have been carried out by a party involved in the sale of this policy to me.
>
> To be honest with you, I'm not sure which way I can proceed with this issue as my understanding is that Motorcare are no longer trading and I have not had any direct communication with Kay International. I therefore kindly request your assistance as, the fact is, Alpha were the underwriters when the policy was sold to me and I therefore suggest that based on this fact, you have a responsibility to assist me as much as possible.
>
> In your letter to Ankenævnet for Forsikring, you state that you are working with the UK FSA. Are the investigations being made into Motorcare or Kay International or both? Please could you provide me with reference details that I can contact the FSA on this matter so that I can give them my details and then be kept informed of their investigations."

Selskabet har i mail af 16/1 2012 til klageren, fremsendt til nævnet, heroverfor bl.a. bemærket:

> "In your e-mail you have replied to one of the questions we raised, in that you confirm that you prefer us to keep your policy running for the 36 months we have offered. Unfortunately, as we have explained, we cannot grant your wish for your policy to continue for as long as you keep your vehicle, nor can we provide you with a refund of premium.
>
> This is because we do not offer, and have never authorized sale of, a 'lifetime of ownership' product. As far as premium is concerned, we have only registered a premium of £73 plus IPT i.e. £76.65 against your policy and we have pointed out that this figure is in fact far less than the sum that should have been paid for the 36 months of coverage we are willing to provide to you.
>
> You mention our responsibility to assist you as much as possible. We believe that we have already fulfilled this request.
>
> We have pointed out that your £500 payment was actually made to the selling dealer and that the difference between the premium we have registered and the figure you paid must have been some form of 'fee' separate from the insurance transaction. In this respect you may have a claim against that car dealer or Motorcare. Even though Motorcare is no longer trading, they and the car dealer are UK regulated businesses and any complaint you may have against these companies may be able to be referred to the UK Ombudsman - something you will have to query with them.

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> We cannot answer your query with regard to the actions being taken by the UK FSA - this is something you will have to take up with them. In our representative, …'s e-mail to you dated 12th November we already provided you with a link to the FSA website relating to Motorcare."

Af forsikringsbetingelserne fremgår bl.a.:

> "This unique policy covers vehicle for the duration of your personal ownership subject to the following important conditions."

Nævnet udtaler:

Selskabet og klageren er uenige om, hvorvidt aftalen er bindende for selskabet.

En afgørelse heraf afhænger af, om Motorcare Elite har haft fuldmagt til at indgå forsikringsaftaler på selskabets vegne og i så fald, om det ved tegningen af forsikringen kan anses for at have handlet uden for sin legitimation, samt om klageren i bekræftende fald har været i ond tro herom.

Nævnet finder, at det ikke på foreliggende grundlag kan afgøre disse spørgsmål. Det vil kræve en bevisførelse, der ikke kan ske for nævnet. I givet fald må bevisførelsen ske ved domstolene.

Det følger af vedtægternes § 4, stk. 1, at nævnet derfor må afvise at afgøre sagen.

Som følge heraf

b e s t e m m e s :

Nævnet kan ikke afgøre sagen.

Marianne Højgaard Pedersen

6. 81.579

formand