Ankenævnet for Forsikring

900/12

Den 1. oktober 2012 blev i sag nr. 81.746:

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xxx xxx
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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 Mechanical Breakdown Insurance i Alpha Insurance A/S. Han klager over, at selskabet har afvist at yde forsikringsdækning for en anmeldt skade i hans Volvo XC90's gearkasse. Skadestidspunktet er anført til den 9/11 2011.

Selskabet har afvist at yde forsikringsdækning med henvisning til, at skaden i gearkassen ikke er opstået pludseligt, men skyldes slitage.

I det af klageren udfyldte klageskema til "Financial Ombudsman Service", der er fremsendt til nævnet, har klageren bl.a. anført:

> "My Volvo XC90 gearbox has broken down. The Alpha Insurance company are claiming wear and tear.
> Mileage when bought 50,753 miles
> Serviced at main dealer 31 August 2011 (car has full service history)
> Mileage at service 56,311 miles
> Current mileage less than 58000
> Wear and tear is acceptable damage caused by normal use, this damage is not Alpha are refusing to pay."

I brev af 9/1 2011 til nævnet har klageren bl.a. oplyst:

"Alpha Insurance has rejected my claim based on the exclusion of wear and tear in my policy. There are many definitions to wear and tear, however they all express a particular idea in speech or writing and that is: Wear and tear is damage that is accepted with normal use.

Therefore it would be accepted that a vehicle tyre would normally be at the end of its life due to wear and tear after 25 thousand miles, a vehicle exhaust may be at the end of its life due to wear and tear after 5 years.

I do not consider a gearbox on a prestige vehicle manufactured in 2007 to be at the end of its life due to wear and tear after 57,882 miles. And neither do the two separate and independent engineers I commissioned believe this. I have included a copy of the reports with my response.

I understand insurance is to protect against unforeseen losses, and I judge this breakdown to be unforeseen. The gearbox was checked for oil and operation including abnormal noise during its annual Volvo service on 31 August 2011 (a requirement of the policy) at 56311 miles and found to be in good order. This evidence was not documented by the Alpha appointed engineer however it was available for inspection. I have included a copy of this report with my response."

Vedlagt brevet til nævnet har klageren fremsendt en "Costumer Report" fra en Volvo-forhandler af 15/12 2011, hvoraf bl.a. fremgår:

"**DEFECTS FOUND ON INSPECTION:**
On inspection a taper roller bearing on internal lay shaft has collapsed causing noise and vibration to the vehicle, damage to the lay shaft and other internal parts caused by the debris from the collapsed bearing circulating within the gearbox could be seen. No sign of overheating present.
Internal damage to the aluminum casing in the area of the collapsed bearing can also be seen

ENGINEERS REMARKS
Probable cause is a defective bearing or manufacturing defect as no signs of wear are present on similar hearings within the gearbox.
Typically this type of gearbox would last in excess of 150000 miles. The vehicle has been serviced in accordance with the manufacturer's instructions detailed in the service book.
The vehicle is in very good condition showing no signs of misuse.
For a vehicle of this age and type this is an unusual breakdown I have not seen before."

Klageren har derudover fremsendt en "Vehicle Inspection Report" af 19/12 2011 til nævnet, hvoraf bl.a. fremgår:

"**DEFECT / INSPECTION / CIRCUMSTANCES.**
…
The lay shaft roller bearing was excessively worn and had disintegrated.

What remained of the rollers was attached to the debris magnet together with fine ferrous material.

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The hub on the pinion shaft adjacent to the final drive pinion was scored.

There was no evidence of lack of lubrication within the gearbox.

The gearbox casings were scored as a result of the lay shaft bearing rotating in the gearbox casing. There was really due evidence of swarf in another and the gearbox.

There was no evidence of damage to the remaining gearbox internals.

RECTIFICATIONS/CONCLUSIONS
…
We can confirm that the lay shaft bearing has deteriorated to the point it has collapsed resulting in consequential damage to the gearbox as a result of the bearing rotating in the gearbox casing.

Given the relatively low mileage the vehicle covered since new, and the fact that there is no evidence of driver abuse or evidence of insufficient lubrication within the gearbox leads us to believe the bearing failure is premature, and therefore we recommend that the manufacturer is contacted to ascertain if there is a possibility of any goodwill payment."

I brev af 10/2 2012 til nævnet fra selskabet hedder det bl.a.:

"**Reasoning**
The cause of the gearbox failure, being the result of deterioration of the lay shaft bearing, is common to all of the involved experts. The issue is whether this was a **sudden failure** within the terms of the policy cover, or a gradual failure that falls outside the coverage available.

The engineer instructed by our claims agent (AutoProtect) holds that this was not a sudden failure - the bearing failed over a period of time and would have given clear audible warning of 'problems'.
…
[Klagers] instructed engineer references a premature failure of the component and suggests the client seek a manufacturer ex gratia contribution. Interestingly he is very careful in his choice of language 'has deteriorated to the point ...' i.e. not a sudden failure …

There is typically an area of 'interpretation' in this type of claim and loss. We support the view of our engineer that this gearbox failure did not occur totally out of the blue, but that this type of bearing would likely fail over a period. Therefore we have tested what the term sudden means in the policy.

The word 'sudden" is not a defined term in the policy, so it carries its standard meaning in every day usage by a 'non-expert' - but it is a word that is open to interpretation i.e. is it something that is

- merely unexpected, as some dictionary definitions specify; or
- does it carry an implication of duration/time span

to put it a different way does it;

- refer to a brief period of time, or is it
- synonymous with 'all at once'.

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In the setting of the policy and given the specified definition of '**Breakdown**' applied in the wording of;

3. **Breakdown** means the sudden and unforeseen failure of an insured **component** arising from any permanent mechanical, electrical or electronic defect, causing sudden stoppage of its function, necessitating immediate repair or replacement before its normal operation can be resumed.

We are convinced that the latter view is correct and we see no reason to accept the carefully non-specific statements of [klagers] engineer and repairer over those of our own engineer.

Our position is therefore still that the repair to [klagers] vehicle is not covered by his insurance policy with our company, but we note that he may well have a valid claim to make against the manufacturer of the failed component."

Af den af selskabets "Engineer" udarbejdede rapport af 25/11 2011, fremgår bl.a.:

"

…	
R3	Our examination revealed that the gearbox is of a manual type.
R4	It was noted that there was evidence of excess swarf deposits throughout the gearbox
R5	All visible gear teeth were free from chipping and damage but were coated in light debris material.
R6	All visible selectors were not worn or damaged but again were coated in light debris.
R7	Examination of the layshaft revealed that the support bearing which is of a taper roller type had collapsed and disintegrated generating swarf throughout the transmission.
R8	The remaining bearings were found to contain swarf debris but were not noisy or rough in operation
R9	The sun and planetary gear teeth were not chipped or damaged and had not lost their case hardening.
R10	The crown wheel and pinion gear teeth were not chipped or broken.
R11	None of the components displayed any evidence of a lack of lubrication or overheating damage and externally the casings was not damaged.
R12	The taper roller bearing outer race was also found to be excessively scored. The casing was also scored where the outer race is located.

OPINION	
01	In our opinion we can confirm that the layshaft taper roller bearing has collapsed and broken up and in our opinion as a result of general wear and in-service deterioration.
02	Prior to failure the shaft would have been operating causing overloading to the bearing prior to it breaking up and the debris has then circulated throughout the transmission contaminating all parts.
03	The casing is damaged as a result of the shaft movement and the damage to the outer race.
04	This condition would have produced an abnormal noise during normal service use and prompt action would have reduced the overall damage.
05	We do not consider the failure of the bearing to have been sudden and unforeseen and has been due to the result of general wear and in-service deterioration.
06	We note from the information provided in our instructions that the vehicle has cove-

	red 7129 miles. Based on the evidence to hand, we can confirm that there' was no evidence to suggest the condition was developing at the point of sale.
07	We have completed a limited identity check on the vehicle. This confirms the registration date as 14/03/07 …

"

Heroverfor har klageren i brev af 20/2 2012 til nævnet bl.a. bemærket:

"My claim is based on

- The breakdown that was sudden and unforeseen (The car suddenly and unforeseen stopped working)

- The failure was permanent and required immediate repair.

…
I nor my wife who travelled in this vehicle heard any abnormal noises.
…
The vehicle drove for both me and my wife without any sign of problems; the vehicle did become undriveable suddenly.
…
The gearbox was checked for oil and operation including abnormal noise during its annual Volvo service on 31 August 2011 (a requirement of the policy) at 56311 miles and found to be in good order. This is only 1571 miles before the vehicle broke down.
The vehicle was also checked using Volvo's electronic diagnostic equipment and then a road test was completed by a Volvo engineer. This evidence was not documented by the Alpha appointed engineer however it was available for inspection. I have included a copy of this report with my response again."

Af forsikringsbetingelserne fremgår bl.a.:

"**Definitions**
Any word or expression to which a specific meaning has been attached will bear the same meaning throughout this policy and will appear in bold.
…
3. **Breakdown** means the sudden and unforeseen failure of an insured component arising from any permanent mechanical, electrical or electronic defect, causing sudden stoppage of its function, necessitating immediate repair or replacement before its normal operation can be resumed.
…
What is Covered
This insurance covers the vehicle against breakdown in the UK of mechanical and electrical components of the vehicle that were the manufacturer's original specification, except those listed in the What is Not Covered section.
…
What is Not Covered
…
Wear and tear generally and worn out components.
…
Preventing Further Damage
In the event of any incident, breakdown or operation of a warning or hazard light, you must not drive the vehicle further."

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Nævnet udtaler:
Efter sin gennemgang af sagen finder nævnet det betænkeligt at lægge til grund, at "the lay shaft bearing" ikke skulle være kollapset pludseligt. Henset til bilens alder, stand og kilometertal er det endvidere nævnets opfattelse, at selskabet ikke har godtgjort, at hovedårsagen til skaden var slitage. Nævnet finder derfor, at skaden er dækningsberettigende.

Som følge heraf

b e s t e m m e s :

Selskabet, Alpha Insurance A/S, skal anerkende, at den anmeldte skade er dækningsberettigende, og skal udbetale erstatning i overensstemmelse med de gældende forsikringsbetingelser med tillæg af renter i henhold til forsikringsaftalelovens § 24.

Poul Sørensen