Ankenævnet for Forsikring

903/12

Den 26. november 2012 blev i sag nr. 82.228:

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xxxxxxxxx
xxx xxx
xxxxxx xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren har husdyrforsikring i Alpha Insurance A/S. Hun klager over størrelsen af den erstatning, som selskabet har udbetalt i anledning af hendes hunds sygdom samt selskabets præmieopkrævning.

Det fremgår af sagen, at klagerens hund i perioden fra den 3/10 2011 til den 20/11 2011 var i behandling for skade på sin kæbe og hyppig vandladning (Polyuris/Polydipsia). Udgifterne til behandlingsforløbet udgjorde i alt 678,25 britiske pund. Klagerens hund afgik den 20/11 2011 ved døden. Klageren er utilfreds med, at selskabet har fratrukket selvrisiko på 170 britiske pund samt 30 % af behandlingsudgifterne og således kun har udbetalt 355,78 britiske pund. Hun er desuden utilfreds med, at hun skal betale præmie for hele perioden fra den 3/10 2011 til den 2/10 2012.

Klageren har i brev af 22/12 2011 til selskabets forsikringsformidler, JLT Online (Paws Pet Insurance), bl.a. anført:

> "I am writing regarding my final claim for our family pet dog ... She was put to sleep on 20th November, and my vet forwarded the claim for her ongoing treatment on my behalf. I was extremely surprised and upset to learn that your company have indicated that you are unable to reimburse me for part of my final claim.

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Our dog was a rescue dog from the RSPCA in December 1999, and had been insured with you from that point. We were fortunate that … had relatively good health, until her later years. Although we have never missed an insurance payment within the whole of the insurance period, we have not been reimbursed for some of her treatment when submitting a claim. Example below.

I refer to a letter I received dated July 27th 2010 claim number 09/paws… & 09/paws... The claim amounted to £176.36, and your reply was that the amount fell below the policy excess of £170 & 30% per condition. The letter does say that you would take these amounts into account for any further claims submitted for these conditions. I contacted your company, to be told that you were unable to pay anything towards the costs. I did wonder at this point what we were actually paying the insurance for, as this was not the first time this had happened.

I now refer to the illness and treatment that … had recently before she died. Claim number 10/paws … & 10/paws … letter dater 18th October 2011. We first received a letter from you saying that because the claim was for two different conditions, payment would not be made due to the excess (similar to the letter in July 2010). Our vet agreed to write to you, and explained that the two conditions were indeed linked. In the letter dated 18th October, you referred to a settlement of £58.19, and another of £196.30, and that you agreed to pay £196.30 this did not account for the first part of the amount of £58.19 the letter was so badly written, it had the total amount wrong, and I had to contact you to be told that yes, the letter was wrong, and that £254.49 would be paid into my bank account.

Now to my last claim, letter dated 5th December 2011, claim number 11/paws … & 11paws ... The total amount submitted was £678.25, and your letter says that you will pay £355.78 (policy excess of £170 + 30% deducted from this; however you state that you are unable to reimburse £152.43 for the PU/PD condition, as this falls below the excess.

I rang your company, and was told by two different people, that this was indeed correct, and that if I was unhappy to write to you. I did say that it was a continuation for the ongoing treatment which was in the previous claim, but was told that this now falls in the period of insurance which started on 2nd October 2011. I was not aware that if an illness and treatment for that illness fell between the renewal dates for the insurance, that it would be regarded as a different claim. I am also shocked to hear that because the insurance certificate despite being paid for monthly covers the whole year, and that I will still have to pay monthly instalments of £33.66 until 2nd October 2012. Paying a monthly instalment for insurance for a deceased pet is in my opinion an insult, especially as we have been with your company for such a long time."

Selskabets forsikringsformidler har i brev af 9/1 2012 til klageren heroverfor bl.a. anført:

"From October 2009 all Paws policies, whilst they could be paid monthly by Direct Debit, are renewable annually. Your 2009-2010 and 2010-2011 policy was underwritten by National Insurance and Guarantee Corporation Ltd. From October 2011 the Paws scheme has been underwritten by Alpha Insurance A/S.

I have now checked with our Claims Department regarding the settlement amount of your claim 11/paws … and ... I was sorry to note that the settlement was less than you expected, however, I confirm that the excess applied is correct and in accordance with the policy underwriter's Alpha Insurance A/S, Terms and Conditions detailed in your policy invitation sent on 16 September 2011.

> I note your comments regarding payment for the 2011-2012 policy but confirm that this is correct and again is within the terms and conditions of the policy. The basic principal of insurer's agreeing to pay for your claim is in consideration of you paying the insurance premium. For policy holders who elect to pay their premium by Direct Debit Instalments the direct debit administrator, in this instance PIN Finance, can allow any outstanding premiums to continue to be paid on a monthly basis."

Klageren indbragte samtidig sagen for Financial Ombudsman Service i England. I klagen af 17/2 2012 anførte hun bl.a.:

> "• How do you want the business to put things right for you?
>
> To cancel the remaining direct debit + refund the amount paid since the death of our pet on 20th Nov 2011 and for the additional part of the claim for £152.63 which they have disputed."

Financial Ombudsman Service afviste den 1/3 2010 sagen med henvisning til, at JLT Online (Paws Pet Insurance) ikke var forsikringsgiver men forsikringsformidler. Forsikringsgiver er det indklagede danske forsikringsselskab Alpha Insurance A/S, som ikke er omfattet af Financial Ombudsman Services kompetence. Klageren har efterfølgende indbragt sagen for Ankenævnet for Forsikring.

Selskabet har i brev af 10/4 2012 til nævnet heroverfor bl.a. anført:

> "In her complaint form [klageren] states that she would like to be paid an additional £152.43 for the PU/PD condition suffered by her pet and she wants to be excused from paying premiums following the death of her pet on 20th November 2011 i.e. she requests a refund of premiums already paid since that date and she wants to cancel the direct debit going forward.
>
> The replies to these matters are to be found in the insurance policy, a copy of which [klageren] has supplied with her complaint. We are enclosing copies of the relevant pages with the text referred to below highlighted, for ease of reference.
>
> **PU/PD (Polyuris/Polydipsia) claim**
>
> Firstly, with regard to the PU/PD claim (03-10-11-10.11.11) for £152.43, Schedule number RQPX199160-1010 (Attachment A) indicates that [klagerens] policy with Alpha Insurance A/S will commence on 03 October 2011 and expire on 02 October 2012. Under Section 1 on Page 9 of the policy (Attachment B) it is stated that we will pay for treatment for her pet up to the maximum benefit available during the period of insurance and her own contribution per period of insurance is also shown in the table underneath.
>
> The dog … was 13 years old the time of policy renewal and [klageren] lives in …, which area sorts under the 'Rest of UK' category. The amount of [klagerens] own contribution is therefore £170 plus 30% of the remainder of the cost of treatment for each illness or injury that is treated during the period of insurance. Thus, although the dog had suffered from the

PU/PD condition previously, prior to the inception of the policy with Alpha Insurance A/S, a new excess of £170 plus 30% deductible was properly imposed and the £152.43 claimed falls within this deductible.

[Klageren] writes that she was 'not aware' that if an illness and treatment for that illness fell between the renewal dates for the insurance that it would be regarded as a different claim. It is most regrettable that [klageren] did not realize that was how her policy worked, but it is clearly explained in the policy text that she had an annual policy, with contributions payable "**per period of insurance.**"

Moreover, in the renewal notification letter supplied to [klageren] prior to renewal in October of 2011 (Attachment C), the administrators explained that her previous insurers had decided to stop providing this type of cover and that if no changes in coverage were required then Alpha Insurance A/S would be underwriting the policy "**from the start of your new period of insurance**". Clearly, even if [klageren] mistakenly believed treatment for her pet could span different insurance periods, it should have been obvious to her that a change of insurer meant that a new policy period was commencing.

Premium Payable

The annual premium payable by [klageren] to insure her pet from 03 October 2011 until 02 October 2012 was £404.00 (see Attachment A). Instead of having to pay this full amount at inception of the policy, customers were provided with the option to pay this premium monthly by interest free direct debit, whereby £33.66 would be payable monthly. At the bottom of the Schedule customers are advised that the direct debit option is financed via a credit agreement with PIN Finance Ltd. and that 12 payments will be collected.

Under General Condition 12 on Page 9 of the policy (Attachment B) it is made clear that although it is possible to terminate the insurance at any time by the sending of written notice, a pro rata return of premium is only provided if an annual premium has been paid and in the case that no claim has been made during the current period of insurance. It is clearly stated, 'If you are paying by monthly instalments no refund of premium is given'.

[Klageren] has made claims under the policy, therefore no refund would be due to her, even if she had chosen to pay the premium up front. Since she chose to pay by monthly instalments, the remainder of the annual premium is still payable and will be collected under the finance agreement.

[Klagerens] pet was put to sleep on 20th November 2011 and [klageren] believes it is an 'insult' for her to have to continue to pay the monthly insurance premiums for her deceased pet. We are naturally very sorry for her loss, but this does not alter the insurance position. If a house burns down early in an insurance period or a car is involved in an accident and is written off, the annual insurance premium is still payable although the insured item is no more.

The position regarding the loss of a beloved pet is very sensitive and was in fact considered in the drafting of the insurance policy. Under General Condition 16 it is stated that, 'In the event of the policy being cancelled following the death or loss of the pet insured, the outstanding balance of the yearly premium will be deducted from any claim settlement made'.

On the one hand, it was felt that collection of the remainder of the annual premium in this way would remove the necessity for policyholders to have to continue paying premium

monthly for an already deceased pet. On the other hand, our administrators have considered that reducing the final payment due to a customer by the outstanding premium due might equally be regarded as unfair, because it increases the hardship caused by the actual loss of the pet unnecessarily, when the remainder of the premium due is already guaranteed by the finance agreement. A review of the policy documentation is therefore underway.

We have not exercised the option to deduct the remaining premium due in the case of ... [Klageren] received a payment of £355.78 after excess deduction relating to the jaw mass claim (10.11.11.-20.11.11) in December 2011, following the death of her dog and the outstanding balance of the yearly premium was not deducted from that settlement. Premiums will therefore continue to be collected on a monthly basis, unless Mrs. Dixon prefers to pay the entire amount outstanding in one go. Of the total £404 due, £235.66 has been collected to date, leaving £167.34 still due.

Conclusion

As explained above, the PU/PD claim for £152.43 falls within the own contribution limit imposed by the policy and is therefore not payable. A refund of premium is not due and a further £167.34 is in fact still payable."

Af forsikringsbetingelserne fremgår bl.a.:

"You may terminate this insurance at any time by sending us written notice. If you cancel the policy prior to the renewal date and have paid an annual premium, you will receive a pro rata return of premium provided that no claim has been made during the current period of insurance. If you are paying by monthly instalments no refund of premium is given.
…
Section 1 - Veterinary fees

What we will pay
All reasonable and customary charges for treatment of your pet by a vet or complementary treatment carried out under their direction by a member of a professional organisation up to the maximum benefit during the period of insurance, for a period not exceeding 12 months from the first date of treatment for each illness or accident.
…
What you must pay for each illness or injury that is treated during the period of insurance
The amount shown in the table below for each UK postcode listed:
…
Pets 11 years or over at the time of treatment
…
Rest of UK
£170 plus 30% of the remainder of the cost of treatment."

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Nævnet udtaler:
Klageren er bosat i Sheffield, og hendes hund var 13 år, da forsikringsaftalen blev forlænget pr. 3/10 2011. Det fremgår af forsikringsbetingelserne, at forsikringstageren skal betale selvrisiko på 170 britiske pund samt 30 % af den resterende del af udgifterne pr. skade i hver forsikringsperiode. Nævnet kan derfor ikke pålægge selskabet at udbetale yderligere erstatning for det omhandlede behandlingsforløb.

Det fremgår yderligere af forsikringsbetingelserne, at der ved forsikringstagerens opsigelse før forsikringsperiodens udløb ved årlig præmiebetaling kun refunderes præmie, såfremt forsikringstageren ikke har anmeldt skader i løbet af den indeværende forsikringsperiode. Nævnet bemærker, at klageren ikke har opsagt forsikringen, men at den automatisk ophørte, da hendes hund afgik ved døden, og den forsikrede interesse dermed bortfaldt. Dette må efter nævnets opfattelse sidestilles med, at klageren selv har opsagt forsikringen. Da klageren har anmeldt en skade i forsikringsperioden, kan nævnet herefter ikke kritisere, at selskabet ikke refunderer præmie for perioden fra hundens død den 20/11 2011 til forsikringsperiodens ophør den 2/10 2012. Da klageren har valgt at betale præmien månedsvis via en finansieringsordning, kan nævnet som følge heraf ikke kritisere, at klageren skal betale til finansieringsselskabet for resten af perioden.

Som følge af det anførte

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson

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