Ankenævnet for Forsikring

908/13

Den 4. februar 2013 blev i sag nr. 82.822:

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xx xxxxxxxxx xxx
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xxxxxx xxxxxx
xxxxxx xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren har hundeforsikring i Alpha Insurance A/S. Hun klager over, at selskabet har opkrævet hende præmie i perioden fra hendes hunds død til forsikringens hovedforfald.

Selskabet overtog forsikringen den 24/10 2011 og har opkrævet præmie for en 1-årig periode, som forfalder i rater månedligt. Efter hundens død er selskabet fortsat med at opkræve de månedlige præmiebetalinger med henvisning til, at klageren har fået dækket en anmeldt skade, hvorfor hun ved opsigelse af forsikringen før hovedforfald ikke har krav på tilbagebetaling af præmie, jf. forsikringsbetingelserne.

Det fremgår af sagen, at klageren den 30/12 2011 anmeldte, at hendes hund var blevet behandlet for en tumor den 20/12 2011. Selskabet udbetalte den 10/1 2012 erstatning herfor. Den 14/3 2012 meddelte klageren selskabet, at hunden var død, og at hun ønskede at annullere forsikringen.

Selskabet sendte brev af 18/4 2012 til klageren. Heraf fremgår bl.a.:

> "We refer to your letter of complaint dated 11th April 2012 where you express your dissatisfaction at still having to pay insurance premium following the death of your pet dog.

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…

Premium Payable

The annual premium payable to insure your dog from 24th October 2011 until 23rd October 2012 was £598.00 (see attached copy Schedule). 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 £49.83? 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 a total of 12 payments will be collected.

Under General Condition 12 on Page 9 of the policy (copy page also attached) 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 dearly stated, 'If you are paying by monthly instalments no refund of premium is given'.

You have made a claim under the policy, therefore no refund would be due to you, even if you had chosen to pay the premium up front. Since you chose to pay by monthly instalments, the remainder of the annual premium is still payable and will be collected under the finance agreement.

We are very sorry for your 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 loss of a beloved pet is very sensitive and was in fact considered in the drafting of the Insurance policy. Under General Condition 16 on Page 9 of the policy 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'.

At the time of drafting the policy 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.

Subsequently 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 that is in place.

You have realised that we have not exercised the option to deduct the outstanding balance of the yearly premium due following the death of your dog, because it seemed fairer to allow you to continue to spread the cost. Premiums will therefore continue to be collected on a monthly basis, unless you actually prefer to pay the entire amount outstanding in one go? Of the total £598 due, 5 payments have been collected to date, leaving £348.81 still due and if you would like to settle this at once, we ask you kindly to contact Paws to arrange settlement."

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Over for nævnet anfører klageren, at hun er utilfreds med, at hun skal betale fuld præmie efter at hendes hund er død. Af et klageskema til den engelske ombudsmand underskrevet den 25/4 2012 fremgår bl.a.:

> "Although the conditions are stated in the Terms and Conditions. I believe these to be unfair as I cannot make any further claims even if I still hold the policy unlike other insurance premium.
>
> Paws have now cancelled my Policy in response to my original email to cancel. This email was before I realized the terms and conditions of the policy. I then reinstated my direct debit which has since been cancelled. However Pin Finance are letting me continue to pay monthly until this matter is sorted out."

I brev af 9/7 2012 til nævnet har selskabet bl.a. anført:

> "[Klagerens] complaint is that it is unfair for her to have to pay the full annual premium under her insurance policy because her dog has died. [Klageren] has already complained to our agent in the UK and directly to Alpha on this matter and it has been pointed out to her, both by our agents and by Alpha, that payment of the full annual premium is still due, because a claim has been made during this policy period.
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> The position of Alpha is fully set out in our letter to [klageren] of 18th April 2012 with enclosures (copy enclosed again here as Attachment ... since it is not clear from the copy supplied if the relevant text in the attachments thereto are highlighted in red).
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> In that letter, for the purposes of clarification only, we refer to other types of insurance where the full annual premium is payable, even though the insured item is no more. It is futile to enter into a general discussion on other types of insurance here, since the situation in every case will depend on the specific policy involved. However, the point we were attempting to make was that if a final compensation payment is made to the owner of the house or vehicle that has been destroyed, then the insurance ceases at that time with no refund of premium being due for the unexpired coverage period. We believe it is not relevant to the current complaint to continue a discussion on other insurance types and we prefer to focus on [klagerens] particular pet insurance contract with our company.
>
> In the e-mail dated 20th March 2012 from [klageren] to our agents, JLTonline, [klageren] states, among other things that she has had an insurance policy with the company for many years with very few claims. In fact JLTonline is an agent and not an insurance company. In the renewal letter supplied to [klageren] prior to renewal in October of 2011 (included in Attachment …), 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'.** This means that Alpha has insured [klageren] only since 24th October 2011.
>
> **Premium Payable**
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> The annual premium payable by [klageren] to insure her pet from 24 October 2011 was £598.00. Instead of having to pay this full amount at the inception of the policy, [klageren] was provided with the option to pay this premium monthly by interest free direct debit, whereby £49.83 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 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 a claim 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 collectable under the finance agreement. However, on 14th March 2012, [klageren] actually sent in a notice of cancellation in respect of her policy, which confused matters somewhat.

Following receipt of that notice of cancellation, [klageren] was given the opportunity by Alpha's agents to cancel her policy. In order to do this however she was asked to return the claim payment that she had already received, whereupon no further premium would be collected. Clearly this option was not attractive to [klageren], since the payment she has received is in excess of the remainder of the premium outstanding. [Klageren] has therefore chosen to continue to pay the outstanding premium by monthly instalment but at the same time pursuing her complaint.

Conclusion

As explained above, and in the letter attached, we consider the terms and conditions of [klagerens] insurance policy to be perfectly clear and fair and consequently no refund of insurance premium is due. We will look forward to receiving the decision of Ankenævnet for Forsikring in due course."

Af forsikringsbetingelserne fremgår:

"**General conditions**

…

10. We may terminate this Insurance at any time by sending you 14 days written notice by registered post to the last address shown In our records.

…

12. 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.

…

16. In the event of the policy being cancelled following the death or Ioss of the pet Insured, the outstanding balance of the yearly premium due will be deducted from any claim settlement made.

…

Law applying to your contract

You or we are free to choose the law that will apply to this Insurance. Unless you and we agree to the contrary then English law and English jurisdiction will apply."

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Nævnet udtaler:
Nævnet bemærker indledningsvis, at sagen er behandlet efter dansk ret.

Ved bortfald af den forsikrede interesse ophører forsikringen. Forsikringen er således ophørt som følge af hundens død, uden at dette har krævet en særskilt opsigelse fra klageren.

I et tilfælde som det foreliggende, hvor nævnet må lægge til grund, at det ikke er hundens død, der har ført til selskabets erstatningsudbetaling, er udgangspunktet, at klageren har krav på tilbagebetaling af pro rata præmie, alternativt at der ikke opkræves præmie for den resterende del af aftaleperioden, hvor selskabet ikke er i risiko. Dette udgangspunkt må dog fraviges, såfremt der mellem parterne er aftalt noget andet. Da den af selskabet påberåbte bestemmelse i forsikringsbetingelsernes generelle vilkår punkt 12 - efter nævnets opfattelse - ikke finder anvendelse i en situation, hvor forsikringsaftalen ophører af andre grunde end ved opsigelse, og da nævnet ikke i øvrigt finder, at udgangspunktet er fraveget i forsikringsbetingelserne, er det nævnets opfattelse, at selskabet har været uberettiget til at opkræve præmie efter hundens død.

Som følge heraf

b e s t e m m e s :

Selskabet, Alpha Insurance A/S, skal anerkende, at det har været uberettiget til at opkræve præmie efter hundens død, og skal tilbagebetale de af klageren erlagte ydelser efter dette tidspunkt.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson