Den 3. december 2014 blev i sag nr. 86262:

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mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har rejseforsikring hos Bupa Denmark Services A/S. Han klager over, at selskabet har afvist at yde forsikringsdækning for udgifter til en genoperation af hans hustrus knæ i deres hjemland, da en operation under rejsen viste sig utilstrækkelig.

Selskabet har begrundet afvisningen med, at genoperationen blev foretaget i klagerens hjemland, hvor rejseforsikringen ikke dækker. Videre har selskabet henvist til, at operationen blev foretaget efter forsikringens ophør, og at selskabets ifølge betingelserne ikke har nogen forpligtelser for følgeskader og eftervirkninger fra skader opstået i forsikringsperioden.

I klageskemaet af 20/5 2014 til nævnet har klageren bl.a. anført:

> "On the 14th April 2013 my wife … suffered a complicated fracture to her left knee joint during a fall on a wet floor in … [rejsedestinationen]. She was hospitalised in a nearby hospital and underwent a four hour operation to repair the extensive damage. After being declared fit to travel she flew back to our home in …, being told to avoid CT Scanning for five week. The day after her journey back to … she attended a private clinic in … for a superficial check of the wound which looked good. 5 Weeks after her return … visited a local remedial clinic to commence treatment but was told that she could only do so after a further CT Scan. The subsequent scan however, showed that the procedure carried out in … had not been successful and that an uneven plateau had been created which would cause a severe limp and early onset of arthritis. An immediate second operation would be necessary and was subsequently carried out by senior orthopaedic surgeon Dr … .
> …

2. What specifically is it you want the insurance company to do? …
We would like the insurance company to pay for the second operation which was required as the result of the first operation not being successful. …"

Hertil har selskabet i brev af 8/7 2014 til nævnet bl.a. anført:

"On 14 April 2013 the Complainant slipped while staying in … and consequently needed an acute knee operation. This operation was performed on 18 April 2013 and the Complainant was subsequently transported back to … on 20 April 2013. All bills related to this incident were afterwards settled by the Company with each provider.

As described by the Complainant approximately 5 weeks after returning to … a physician found that an additional operation was needed to avoid further complications.

The Company therefore received from the Complainant a request for cover of an additional operation in the country of permanent residence … as expenses for this operation was related to an incident abroad covered by the Company … This request was denied by the Company as the insurance cover ceases upon the return of the insured to the country of permanent residence. However, the Company proposed that our in-house doctors could look at the case to determine if it was a case of malpractice.

After reviewing the medical information the Company's in-house doctors concluded that the wounds had not healed properly after the complicated surgery, but that there was no indication of malpractice. From the medical information it was deduced that the operation was performed in a professional manner, however the bone taken from the hip was insufficient to repair the bone. Nevertheless, according to the Company's doctors this is not uncommon.

In connection with this case the Company has paid for the medical expenses incurred abroad and the repatriation of the Complainant. The Company has furthermore tried to establish if this was a case of malpractice in order to find out if it was reasonable to ask the hospital the repay the expenses of the initial operation to pay for a second operation. However, there is no evidence of malpractice although the end result of the operation was not satisfactory.

According to the conditions we do not provide cover in the country of permanent residence after the end of the trip. The Company's in-house doctors have concluded on basis of medical evaluation that this is not a case of malpractice and furthermore the hospital was neither chosen nor recommended by the Company. We therefore maintain our decision to reject the request submitted for payment of further expenses with reference to sections,

'4.2: The **insurance** does not provide cover within **your country of permanent residence**.'

and,

'32.3: **Our** liability shall automatically cease at the end of the **insurance** period, including liability for on-going treatment, consequential damages and after-effects of any injury or illness incurred during the **insurance** period.'

Conclusion:

The Company maintains that the expenses incurred by the Complainant in his country of permanent residence after the repatriation are not covered in accordance with the Policy Conditions."

Selskabet indhentede oplysninger fra den læge, der udførte genoperationen i klagerens hjemland. Det fremgår bl.a. af lægens erklæring af 15/1 2014:

"The following are answers to questions put to me, Dr …, the surgeon carrying out the second operation in … after the first operation performed in …:

1) What is their evaluation of the first surgery?

Answer: the bone taken from …'s hip during the procedure in … was not sufficient enough in size to replace the bone damaged and lost in the accident.

2) Is there any evidence of malpractice?

Answer: I cannot comment on the subject of malpractice. The bone taken from her hip was simply not sufficient to repair the break which could have been due to a miscalculation in the size required.

3) Could it be that the wound has simply not healed sufficiently or expectedly?

Answer: The break had healed well but the bone used in the procedure in … had not been sufficient to recreate the even plateau required of the joint. The procedure I carried out used synthetic bone which was designed to augment the healed joint and recreate the even plateau."

I forsikringsbetingelserne fremgår det bl.a.:

"This travel **insurance** covers **you** for unexpected events while **you** are travelling outside **your country of permanent residence**, including medical emergencies, stolen baggage and cancellation or interruption of **your** trip.…
LIST OF BENEFITS…
Overseas medical expenses and **hospitalisation**
…
POLICY CONDITIONS Our Policy Conditions have been prepared in accordance with Danish Law and the Danish Insurance Contracts Act. Along with the **Certificate of Insurance**, these **Policy Conditions** outline all the terms, conditions, limitations and exclusions that apply to the cover **you** purchase.
…
SECTION 4 WHERE IS COVER PROVIDED
…
4.2: The **insurance** does not provide cover within **your country of permanent residence**.
…
SECTION 5 WHAT IS COVERED BY THE INSURANCE
…
5.1: **The** insurance **shall cover expenses incurred by** you **in the** insurance **period as stated in the** insurance, **including but not limited to the List of Benefits,** Policy Condi-

tions **and** Certificate of Insurance **and subject to all terms, conditions and exclusions outlined in the insurance.**
…
SECTION 32 ASSIGNMENT, TERMINATION, CANCELLATION AND EXPIRY
…
32.3: Our **liability shall automatically cease at the end of the** insurance **period, including liability for on-going treatment, consequential damages and after-effects of any injury or illness incurred during the** insurance **period.**"

Nævnet har gennemgået de fremlagte bilag, herunder klagerens mailkorrespondance med selskabet forud for klagen.

Nævnet udtaler:
Det fremgår af sagen, at klagerens hustru faldt og pådrog sig et brud på knæet under en rejse. Knæet blev opereret første gang på et hospital under rejsen. Fem uger efter hjemkomst blev der foretaget en genoperation, da der ved den første operation blev anvendt en mængde brusk til at hele bruddet, som efterfølgende viste sig utilstrækkelig.

Klageren har tegnet rejseforsikring hos selskabet perioden 6/4 2013 til 19/4 2013. Klagerne returnerede til deres hjemland den 20/4 2014.

Nævnet har efter en gennemgang af sagen ikke fundet anledning til at kritisere, at selskabet har afvist at yde forsikringsdækning for omkostningerne til genoperationen, idet afgørelsen er i overensstemmelse med forsikringsbetingelserne.

Nævnet lægger herved vægt på, at det tydeligt fremgår af forsikringsbetingelserne, at der ikke ydes dækning for udgifter til behandling i klagernes hjemland, og at der alene ydes dækning for "overseas medical expenses and hospitalisation". Derudover har nævnet lagt vægt på, at selskabets forpligtelser ifølge betingelserne ophører ved udløbet af forsikringsperioden.

5. 86262

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Marianne Højgaard Pedersen
formand