Ankenævnet for Forsikring

Den 17. august 2016 blev i sag nr. 89395:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

AGA International SA
v/Falck TravelCare
c/o Falck Danmark A/S
Postboks 211
0900 København C

afsagt

k e n d e l s e :

Forsikringstageren har rejseforsikring i AGA International SA v/Falck TravelCare. Han klager over selskabets afslag på at yde dækning for et røveri under en rejse til udlandet.

Selskabet har i sit afslag på at yde dækning blandt andet henvist til, at klageren ikke har dokumenteret, at de anmeldte genstande er bortkommet ved en dækningsberettigende forsikringsbegivenhed.

I klageskema modtaget af nævnet den 9/5 2016 er det bl.a. anført:

> "While on vacation in my native country in … I was robbed by a taxi driver that I had hired to drive me from the city of [by 2] to my place of residence. Along the way he suddenly pulled a gun and ordered me out of the car while leaving my luggage behind. That same day I went to file a report with the police (see enclosed). I contacted FALCK immediately after. FALCK rejected my claim (see enclosed).
>
> 2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
>
> I want reimbursement for the things that I've lost which is listed in the police report."

I selskabets brev af 23/5 2016 til nævnet hedder det bl.a.:

> "Klageren har en [flyselskab] rejse- og afbestillingsforsikring tegnet via Allianz Global Assistance Europe (Allianz).

Klageren har købt sin flyrejse via [flyselskab], hvor han samtidig køber en rejse- og afbestillingsforsikring hos [flyselskab].

Klageren mister sin bagage indeholdende 9 brugte … laptops, 3 computer spil, 8 par voksen sko, 11 par børnesko, 2 armbåndsure, 2 armbånd, body og hårlotion, 1 barbermaskine, bluse og bukser, 5 dåser sødemiddel, [valuta] 284,000,00 (DKK 9500,00) under transport i bil mellem [by 1]/[by 2].

Klager oplyser at have være udsat for røveri.

Klager ønsker i den anledning erstatning for ovennævnte genstande som var indeholdt i den mistede bagage.

Sagens tvist vedrører, at Falck Global Assistance ikke har ydet dækning for den mistede bagage.

Med henvisning til [flyselskabs] forsikringsbetingelser (bilag 1) Generelle betingelser, artikel 3 forsikrer selskabet kun personer, der i policens løbetid er registreret i et dansk folkeregister som bosiddende eller aktuelt opholdende sig på bopælen i Danmark, der er angivet på forsikringscertifikatet.

Med henvisning til [flyselskabs] forsikringsbetingelser (bilag 1) Kategori II Rejsebagage Artikel 1 fortolkes ordet bagage som den bagage forsikrede medtager på rejsen til sin personlige brug.

Med henvisning til [flyselskabs] forsikringsbetingelser; Kategori II Rejsebagage artikel 6.4 er bevisbyrden for at der sket tyveri, tab, uretmæssig tilegnelse eller beskadigelse af bagagen såvel som for omfanget af skaden og det faktum, at den forsikrede var i besiddelse af den, påhviler altid den forsikrede. Den forsikrede skal endvidere bevise skaden ved hjælp af originalfakturaer eller kopier heraf, garantierklæringer...

Selskabet har behandlet sagen ud fra ovennævnte betingelser og har den 22.02.2016 informeret klager om afvisning af sagen med henvisning til betingelserne. Samt det faktum at klager oplyser, at bagagen blev stjålet sammen med en lejet bil, hvilket ikke fremgår af den fremsendte politirapport, hvor det fremgår, at bagagen 'got missing in transit'.

Klager vender tilbage til selskabet den 13.03.2016, hvor han oplyser, at hans søn er dansk statsborger og at han selv bor og arbejder i Danmark samt at han havde lejet en bil med chauffør og af denne blev truet med en revolver til at forlade bilen uden bagagen.

Indholdet i ovennævnte brev samt klagerens brev til Ankenævnet har ikke ændret på vores vurdering af sagen, størstedelen af indholdet i kufferten kan ikke betegnes som værende til 'personlig brug' (Kategori II Rejsebagage Artikel 1), bl.a. kan nævnes 9 laptops, 11 par børnesko og 8 par voksensko. Derudover har klager ikke sandsynliggjort, at han har været i besiddelse af de pågældende genstande ved at fremsende dokumentation for disse - ej heller for de genstande, som vi kunne betegne som værdier til 'personligt brug', hvorfor vi på baggrund af ovennævnte må fastholde, at Falck Global Assistance på vegne af Allianz Global Assistance Europe ikke kan udbetale erstatning for den bortkomne bagage."

I klagerens mail af 12/6 2016 til nævnet er det bl.a. bemærket:

"I fully disagreed with some of the things written in the document sent by Falck Global Assistence, and some of the things I disagreed with are:

*They claimed I had informed them that the driver was threatened with a gun to his head to leave the car without the luggage.

What I told them is that the driver of the vehicle pointed a gun at my head and ask me to quietly take my son and get out of the vehicle or else he is going to shoot me.

*And among the items stolen were 1, [spillekonsol] computer game not 3 computer games. And 3 bracelets not 2 bracelets.

*A copy of correspondence sent to them on the 13 March 2016 is also missing. (see encl below)
…
Sunday, 13 March, 2016, 6:11 PM Mark as Unread

From:
'[klager]' <[klagers mailadresse]>
To:
claims….@dk.falck.com
Full Headers Printable View

Note that two of my bracelets and my hair cream were not included among the documents I gave your colleague, because I got them as gift and I don't know their names nor how much they worth."

I selskabets brev af 20/6 2016 til nævnet hedder det bl.a.:

"Below, please find Falck Global Assistance's comments to [klagers] mail about our decision in above case.

According to the police report 3 bracelets were stolen and not 2 and 3 PS-3 computer games.

We do not have any further comments to [klagers] mail of June 12, 2016."

I et retsbogsudskrift fra udlandet af 30/12 2015 er det bl.a. anført:

"**IN THE HIGH COURT OF JUSTICE**
EDO STATE OF … [land]
IN THE [by 1] JUDICIAL DIVISION
HOLDEN AT [by 1]
AFFIDAVIT FOR STOLEN ITEMS

I, [klager], a Christian and a Citizen of … [land], residing at [adresse], [by 1], … [land] do hereby make an oath and state as follows:

1. That I am the above Person.

2. That 3 luggages (Bags containing the following items:

a. 9 used laptops, [computermærke]
b. [spillekonsol] Computer Games
c. 8 Pairs of Adult Shoes
d. 11 Pairs of Children Shoes
e. 2 Wrist Watches and 3 Bracelets
f. Body Cream and Hair Cream
g. 1 Barbing Machine
i. Shirts and Trousers
j. 5 can's of … Granular Sweetener
k. ₦284,000 (Two Hundred and Eighty Thousand …) Only.

3. That the incident took place on the 28 day of December, 2015 around 7:15 pm along [vejnavn].
4. That this affidavit is now required to obtain police extract and to notify the authority of whom it may concern for record and official purposes.
5. That I make this affidavit Conscientiously believing same to be true and correct and in Accordance with the … State Statutory Law of 1976, now applicable in …

[underskrift, klager]
DECLARANT"

I udskrift fra politirapport af 30/12 2015 hedder det bl.a.:

"Our ref: Date: 30/12/2015

CD/NO	TIME	DETAILS OF ENTRY
107 OF 30/12/2015	1100 HRS	STOLEN ITEMS: Today being 30/12/2015 at about 11000hrs, [klager]. I 'm' a Christian and citizen of …, residing at …, came to the Station with a sworn affidavit from the High court of Justice, holden in [by 1] dated 30th of December, 2015 with receipt No. A004756757 and states as follows; That he is the rightful owner of three luggages (bags) containing the following items; (a) Nine (9) used Laptops … (b) Three (3) [spillekonsol] Computer Game (c) Eight (8) pairs of Adult Shoes (d) Eleven (11) Pairs of Children Shoes (e) Two (2) Wrist watches and three (3) Bracelets (f) Body and Hair Cream (g) One Barbing Machine (i) Shirts and Trousers (j) Five (5) Can's of … Granular Sweetener and (k) the Two Hundred and Eight-Four Thousand … (#284,000.00k) only.; Tha the public and the authority that it may concern. Entry made byW/Inspr ….

"

I klagerens mail af 9/2 2016 til selskabet er det bl.a. anført:

"Hi,

Regarding our conversation yesterday!

All the shirts, trousers and shoes in the bags worth about 13000 DKK, and I bought them since 2011,2012,20013, 2014 and 2015 but can't find their receipt anymore.

And all the laptops worth 15300 DKK which I bought october 2015 from loppemarked.

Kindly Regards

[klager]"

I selskabets brev af 22/2 2016 til klageren hedder det bl.a.:

"On behalf of Allianz Global Assistance Europe we have evaluated your case in respect of stolen luggage in ...

Unfortunately you claim for reimbursement can not be met and we must reject reimbursement due to the following reasons:

*The company only insures persons who are recorded in a Danish population register as residing in Denmark - in the police report forwarded by you it states that you are a citizen of … and residing at … in … [land].
*You report to us that the luggage was stolen together with a rented car. However the police report does not mention anything about stolen luggage, nor stolen rental car, however it states that luggage got missing in transit.
*According to Article 8.4 theft from motor vehicles is not eligible for reimbursement. Unless the insured can prove that luggage has been left behind in properly locked boot, invisible from the outside.
*No documenation for purchase of the claimed missing/stolen luggage.
*No documentation for rented car, nor that this was stolen.
Should you have any questions, please do not hesitate to contact us."

I klagerens mail af 8/3 2016 til selskabet er det bl.a. anført:

"However, I'd disagreed with your decision for saying that only danish citizens are entitle to reimbursment, that's quite strange to me because I didn't see that on the page your company sold me the insurance and couple with the fact that I have never heard this from other insurance company I've been using since I started traveling.
Secondly, you also failed to recognize my child that traveled with me as a danish citizen."

I klagerens brev af 13/3 2016 til selskabet hedder det bl.a.:

"You said that the company only insures persons who are recorded in a Danish population register as residing in Denmark , But you ignored the fact that my child is a Danish citizen and I also live and work here in Denmark legally. With these I think my son and I deserved to be treated fairly."

I en udateret mail fra selskabet til klageren hedder det bl.a.:

"We have taken into consideration that your son is a Danish citizen, so please disregard this issue"

I selskabets brev af 21/3 2016 er det bl.a. anført:

"On behalf of Allianz Global Assistance Europe we have finalised your claim regarding robbery in ...

Falck Global Assistance cannot comply with your claim. We also been in contact with Allianz Global Assistance and discussed your claim and they agree with Falck Global Assistance in the rejection of your claim.

Reason for the rejection
As a condition for any evaluation of your case, there must be written documentation that supports the claim.

This requirement is stated in your insurance at Allianz Global Assistance Europe.

Because there is no written documentation available for the case handling, Falck Global Assistance cannot comply with your claim concerning the stolen items that you have reported. There is no documentation for a stolen car in the police report and no receipts/documentation that supports any of your stolen luggage. Therefore we must maintain our decision."

Af bekræftelse fra selskabet på forsikringen ved mail af 19/5 2016 fremgår det bl.a.:

"Thank you for choosing Allianz Global Assistance Europe for your travel insurance needs.

Your policy document is attached. This document contains everything you need to know about the benefits you have selected. However, to ensure you understand the cover provided, please read the coverage overview and the policy wordings carefully.

Travel and Cancellation Insurance Policynumber: … Insured: Denmark - …
Start date: 26-12-2015 End date: 27-01-2016

For following persons:
1.MR … [klageren]
2.MSTR … [klagerens søn]

Travel and Cancellation Insurance 2 * 819.50 DKK = DKK 1639.00
Conditions

D.KLM.DK-10/12 Coverage overview P.KLM.DK-10/12 Terms and conditions"

Af forsikringsbetingelserne fremgår det bl.a.:

"

Category II TRAVEL LUGGAGE	Insured amounts (per person, per certificate of insurance, unless stated otherwise)
Insured amount	DKK 6.000
Deductible per person per event	**DKK 220**
Including	
• Photo, film, video/dvd, computer, telecommunications equipment and valuables.	DKK 3.000
• Contact lenses and spectacles	DKK 3.000
• Musical instruments	DKK 3.000
• Travel documents	DKK 1.500

• Medical documents	DKK 3.000
• Goods purchased during the journey	DKK 3.000
• Gifts for third parties	DKK 3.000
Additional cover:	
• Clothes and/or toiletries replacement	DKK 1.120

…

Article 3. Validity of the insurance

3.1. The insurance policy is only valid if it has been taken out simultaneously with the booking of the [flyselskab] ticket.

3.2. The insurance policy is only valid if it has been taken out for the entire duration of the journey (journey there, stay, return journey).

3.3. The Company only insures persons who, during the validity term of the policy, are recorded in a Danish population register as residing or actually staying in the place of residence in Denmark, which is also stated on the certificate of insurance.

3.4. The insurance shall not be valid if the Company has already informed the insured in the past not to wish to insure him/her. In such instances, the Company will refund any premium that has already been paid at the insured's request.

3.5. All the categories that have been taken out shall be governed by the General Policy Conditions, unless they are deviated from in the category conditions.

…

Category II. TRAVEL LUGGAGE

These category conditions shall also be governed by the General Provisions, unless they are deviated from in these category conditions.

Article 1. Nature and scope of the insurance

The word luggage is taken to mean: the luggage which the insured takes with him/her on the journey for his/her personal use. If the insured luggage is damaged by theft, loss, misappropriation or damage, the Company shall reimburse this damage up to the maximum amount of the insurance stated on the cover overview below the insurance policy taken out. In the event of damage to or loss of an insured object with accessories, only one insured person can claim reimbursement.

As long as the insurance is in effect, the insured is also insured against damage to luggage which is sent on or after by boat, train, bus or plane, against receipt.

The maximum insured amounts stated on the cover overview below the insurance policy taken out shall apply to the luggage mentioned in Articles 1.1 up to and including 1.9 with due observance of the stipulations stated below:

1.1. Photo, film, video/dvd and computer equipment, including image, sound and data media. All the objects that together make up the equipment are considered to be one object, such as cameras, objectives, filters, tripods, film suns, recorders, bags, etc.
The term computer equipment shall be taken to mean: computers (including organisers), including peripherals and software.

1.2. Valuables: jewellery, watches, furs, radio and television sets, gold, silver or platinum objects, precious stones, pearls, binoculars, sound and visual equipment (except for photo, film, video/dvd, computer and telecommunications equipment) and other valuables.

1.3. Telecommunications equipment.

1.4. Contact lenses and spectacles

1.5. Musical instruments: musical instruments and accessories (except for drumheads, strings and mouthpieces).

1.6. Travel documents.
Travel documents is taken to mean: driving licences and registration certificates, transport tickets purchased specifically for use during the journey, IDs, tourist cards, passports and visa.
1.7. Medical equipment: medical equipment including the costs of repair.

The word luggage is also taken to mean:
1.8. Goods purchased during the journey.
1.9. Gifts for third parties: goods purchased by the insured before or during the journey, intended as gifts/presents for third parties.
…
Article 6. Special obligations in the event of damage
6.1. In the event of loss, theft or misappropriation the insured shall report this immediately to the local police authorities. If such report is impossible, the insured must report this at the first possible opportunity. The insured shall submit a statement of this report to the Company.
…
6.4. The burden of proof of theft, loss, misappropriation or damage of luggage a wel as the amount of the damage and the fact that the insured really was in possession of it is always the responsibility of the insured. The insured shall furthermore prove the damage by means of original invoices or duplicates thereof, guarantee certificates, statements by experts about the possibility of repair and other evidence required by the Company. In the event of damage, the insured shall also enable the Company to inspect the luggage before it is repaired and/or replaced.
If the insured fails to fulfil said obligations, the Company will not pay any reimbursement.

Article 7. Special exclusions
The cover does not include:
7.1. Theft, loss, misappropriation or damage to money and traveller's cheques, stamps, documents, photos, documents of value such as public transport subscriptions, discount cards, season tickets, entrance tickets, passes, etc., commodities, removal goods, sample collections and items of art or collector's value."

Nævnet udtaler:

Klageren har rettet krav om dækning for bagage, som han mistede ved et røveri i udlandet. Han har oplyst, at han var rejst til sit oprindelsesland sammen med sin søn, og at de havde hyret en chauffør til at køre dem til deres slutdestination. Chaufføren standsede under turen bilen og truede dem med en pistol til at stige ud af bilen og efterlade deres bagage i bilen, hvorefter chaufføren kørte bort.

Klageren har ifølge politirapporten oplyst, at bagagen indeholdt ni brugte laptops, tre computerspil, otte par voksensko, 11 par børnesko, to armbåndsure, tre armbånd, bo-

dy- og hårlotion, en barbermaskine, bluse og bukser, fem dåser sødemiddel og et kontantbeløb svarende til ca. 9.500 kr.

Videre har klageren oplyst, at tøjet og skoene var omkring 13.000 kr. værd og købt i perioden 2011 til 2015, og at han ikke har kunnet finde kvitteringer herpå. Derudover har han oplyst, at de bærbare computere er 15.300 kr. værd og er købt på loppemarked i oktober 2015.

Klageren har for de øvrige genstande fremlagt udskrifter fra hjemmesider, hvoraf det fremgår, hvad tilsvarende genstande kan købes for.

Selskabet har i sin afgørelse af 22/2 2016 meddelt afslag bl.a. med henvisning til betingelsernes artikel 3, hvoraf det fremgår, at "The Company only insures persons who, during the validity term of the policy, are recorded in a Danish population register as residing or actually staying in the place of residence in Denmark, which is also stated on the certificate of insurance". Selskabet har henvist til oplysninger i politirapporten om klagerens bopæl.

Nævnet bemærker, at der ikke over for nævnet er fremlagt et "certificate of insurance", hvor en sådan forsikringsklausul skulle fremgå.

Klageren har oplyst, at han arbejder og bor i Danmark, og at hans mindreårige søn er dansk statsborger. Klageren har anført, at han i øvrigt ikke blev gjort opmærksom på klausulen i forbindelse med tegning af forsikringen.

Selskabet har i tidligere korrespondance med klageren anført, at "We have taken into consideration that your son is a Danish citizen, so please disregard this issue". I selskabets brev af 21/3 2016 til klageren har selskabet ikke fastholdt denne afvisningsgrund.

Nævnet finder, at selskabet ikke har bevist, at der foreligger omstændigheder, som gør, at selskabet er berettiget til at afvise at yde forsikringsdækning under rejseforsikringen –

som selskabet har modtaget og beholdt præmie for – med henvisning til forsikringsbetingelsernes artikel 3.

Efter en gennemgang af sagen finder nævnet, at klageren har løftet sin bevisbyrde for, at hans bagage er bortkommet ved en dækningsberettigende forsikringsbegivenhed.

Nævnet har lagt vægt på, at klageren har anmeldt forholdet til politiet samt afgivet vidneudsagn ved domstolene. Han har således opfyldt sine forpligtelser i henhold til betingelsernes artikel 6, hvorefter: "In the event of loss, theft or misappropriation the insured shall report this immediately to the local police authorities".

Den omstændighed, at der i politirapporten er anført, at bagagen "got missing in transit between [by1]/[by2] Road", kan efter nævnets opfattelse ikke i sig selv føre til andet resultat. Politirapportens overskrift er "Extract from crime diary" ligesom der i både politirapporten og vidneerklæringen fra domstolene indledningsvist anføres "stolen items".

Nævnet bemærker i øvrigt, at det fremgår af betingelsernes Kategori II, artikel 1, at selskabet skal dække "If the insured luggage is damaged by theft, loss, misappropriation or damage", og at der således ikke stilles krav om, at der skal være tale om et røveri.

Nævnet finder, at selskabet ikke har godtgjort omstændigheder, som giver grundlag for at tilsidesætte klagerens forklaring om, at bagagen blev stjålet.

Nævnet finder derfor, at selskabet skal anerkende at yde forsikringsdækning.

Selskabet har i forhold til klagerens krav anført, at "størstedelen af indholdet i kufferten kan ikke betegnes som værende til "personlig brug" (Kategori II Rejsebagage Artikel 1)".

Ifølge betingelsernes Kategori II, artikel 1, punkt 1.9 dækkes som bagage tillige "goods purchased by the insured before or during the journey, intended as gifts/presents for third parties".

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Som sagen er oplyst, finder nævnet ikke grundlag for at tilsidesætte klagerens oplysninger om indholdet af bagagen. Nævnet finder, at visse af de anmeldte genstande – såsom ni lapstops, samt 19 par voksen- og børnesko mv. – efter sit antal ikke fremstår som genstande til "personlig brug", men at der eventuelt kan være tale om "goods intended as gifts/presents for third parties".

Nævnet finder derfor, at selskabet skal genoptage sagsbehandlingen med henblik på at opgøre klagerens erstatning, hvorunder det eventuelt må afklares nærmere, hvilke af klagerens genstande der kan anses for dækket af forsikringen, og hvilke dækningsmaksima, der gælder for den pågældende begivenhed.

Som følge heraf

b e s t e m m e s :

Selskabet, AGA International SA v/Falck TravelCare, skal anerkende, at klageren under sin rejse i udlandet har været udsat for en dækningsberettigende forsikringsbegivenhed. Selskabet skal genoptage sagsbehandlingen og skal opgøre erstatningen i overensstemmelse med aftalegrundlaget. Erstatningen skal forrentes efter forsikringsaftalelovens § 24.

Klagegebyret tilbagebetales.

Peter Thønnings
Udskriftens rigtighed bekræftes

Carsten Sennels