Ankenævnet for Forsikring

Den 11. oktober 2017 blev i sag nr. 90871:

xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har rejseforsikring med bagagedækning hos Bupa Denmark Services A/S. Han klager over størrelsen af den erstatning, som selskabet har udbetalt for en kuffert, der bortkom under en flyrejse.

Klageren har på baggrund af en udførlig liste over indholdet af kufferten fremsat krav om en erstatning på 1.414 GBP. Selskabet har udbetalt 850,12 EUR i erstatning, hvilket svarer til cirka halvdelen af klagerens krav. Selskabet har anført, at det har nedskrevet klagerens krav med 50 % under henvisning til, at han ikke har kunnet fremlægge nogen dokumentation for de bortkomne genstande, der hovedsageligt var tøj og sko.

I klageskema af 16/5 2017 har klageren blandt andet anført:

> "We took out travel insurance with Womads (Bupa-global) on 01-12-2016 which included for lost luggage.
> Our bags were lost by the airline we were flying with on 27-12-2016. Womads have only reimbursed us for 50% of our claim.
>
> 2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
> We would like full reimbursement of our claim."

I brev af 6/6 2017 til nævnet har selskabet hertil blandt andet anført:

"**Sagsfremstilling:**

Selskabets modtager den 1 7.januar 201 7 en skade fra Klageren angående forsinket bagage. Denne skade afregner Selskabet d. 4. februar 201 7. Da flyselskabet ikke kan finde bagagen indgiver Klageren en ny skade for mistet bagage d. 3. og 6. marts. Skaden indeholder en liste over de bortkomne genstande samt dokumentation for, at Klageren har fået GBP 425,70 fra flyselskabet for mistet bagage.

D. 21. marts afregner Selskabet regningen og modregner 50%, idet der ingen dokumentation var vedlagt for nogle af de bortkomne genstandene. Ydermere skal denne nedskrivning ses i forhold til at de bortkomne genstande er tøj.

21.6: **We** will pay up to the maximum amount payable per **claim**, according to the List of Benefits. The value of your lost or damaged **baggage** and personal items are calculated according to the folio, ring principles:

a. The **insurance** shall cover the replacement cost of comparable new items, if the covered items are documented as less than two years old. However clothes must be documented as less than one year old.
b. For items more than two years old, purchased second-hand or already damaged, compensation will be fixed at the replacement cost of comparable new items less a fair deduction for deterioration due to age, wear and tear, reduced usability or any other circumstance. This also applies to items for which no documentation of age and value can be provided.

Som det fremgår af Sektion 21.6.a. vil vi dække tøj med nyværdien, hvis det dokumenteres, at dette er under et år gammelt. Ydermere står der i sidste linje i sektion 21.6.b., at Selskabet vil nedskrive værdien, hvis ingen dokumentation kan påvise værdien og alderen af de bortkomne genstande.

Da Klageren har angivet i sin skadesanmeldelse, at alle dækkede genstande, bortset fra kufferten, var fra 2016 og dermed under et år, må det kunne forventes, at Klageren kan fremskaffe kvitteringer eller bevis for køb for at dokumentere noget af sit krav. Dette har Klageren ikke gjort, men blot påpeget det urimelige i dette. Det skal også påpeges, at vi sjældent ser, at alle genstande i en skade har samme alder, hvilket vi også mener, retfærdiggør en hvis form for dokumentation. Vi har derfor nedskrevet skaden i henhold til Sektion 21.6.a og 21.6.b.

Vi medgiver kunden, at det ikke nævnes i betingelserne præcist, hvor meget de enkelte genstande bliver nedskrevet med. Men det skal også påpeges, at vi mener det er rimeligt, at vi kræver af vores forsikringstagere at de helt eller delvist kan retfærdiggøre ejerskabet af deres genstande.

På baggrund af ovenstående argumenter fastholder Selskabet sin afvisning af ovenstående klage, men vil naturligvis genvurdere værdien af de genstande, som Klageren kan finde dokumentation for.

Konklusion:
Selskabet fastholder derfor sin vurdering af denne sag som allerede angivet overfor Klageren i den af kunden vedhæftede dokumentation."

Klageren har ved e-mail af 26/6 2017 til nævnet heroverfor blandt andet anført:

"In response to the letter dated 6 June from BUPA Global I have attached extracts from their insurance policy which I think relevant in this case.

Our case is built upon the premise that it is unreasonable to require receipts to be kept for every item that is lost from holiday baggage - instead an objective assessment can be made as to whether a claim is reasonable or not. In our case of a family of 2 adults and 3 children going away for a holiday of a lifetime it cannot be said that our claim is unreasonable or exaggerated.

The introduction to their policy states *'You'd rather not think about all of the things that might go wrong on your trip'* - indeed this applied in our case when purchasing clothing for the holiday in the months leading up to us going away. A house needs a considerable amount of organized storage space if every receipt for every item no matter how small is kept – this is not the reality for busy families. As with most families we do not routinely keep receipts particularly for clothing, as if clothing is faulty it can be returned without a receipt – so why would we keep them? This is an unreasonable condition of the insurers which we would argue is included in order to give them an excuse not to pay and certainly should not apply to clothing.

BUPA's letter of 6 June is highly selective in the policies it refers to. I can refer to other policy conditions which **do** not mention the need for documentation.

Please see attached an extract from their policy which shows the *'Benefits and limits of Insurance'* - there is no mention of a need for documentation.

Also attached is condition *'21.3 We will not cover or pay for:'* this list does not include claims without documentation.

This policy was meant to cover the costs of our loss, that is what we pay our premium for. We rarely make insurance claims but when we do we expect the company involved to meet its obligations which Womads are clearly trying to extract themselves from.
I would therefore respectfully ask that our complaint be upheld."

Af selskabets e-mail af 16/5 2017 til klageren fremgår blandt andet:

"It is correct that the 50% deduction is not clearly stated in our policy conditions. However, as you can see under Section 33.1, your insurance is regulated by the Danish law. The deduction applied to the claimed items has been made in accordance with the Danish compensation practice in this matter.

Even though you have not documented the extend/full value of your loss, we did agree to cover 50% of the amount you claimed without any receipt/ documentation at all.

> Should you be able to retrieve documentation for some of the lost items within three years following the date of the incident, please forward it to us and we will of course reassess your claim accordingly."

Af klagerens e-mail af 12/4 2017 til selskabet fremgår blandt andet:

> "I don't know why you have quoted this paragraph as our lost clothes were not more than 2 years old. If you have applied this clause then this is incorrect. In addition you will need to provide us a full breakdown on how this has been calculated.
>
> You cannot seriously expect anyone to keep receipts for every pair of shorts, every tee shirt, every pair of shoes for a family of 5 - this is completely unrealistic and has the hallmarks of a company trying to wriggle out of its obligations.
>
> Can you also please highlight the condition in your contract which states that non documented claims will be reduced by 50% - you seem to have decided this quite arbitrarily. You did not state this when we first lodged our claim and if this is the case it needs to be made clear within the summary of cover."

Af selskabets e-mail af 21/3 2017 til klageren fremgår blandt andet:

> "We have assessed your claim and we have now reimbursed the amount of EUR 850.12. The money has been transferred to your account and will be at your disposal within 1-2 weeks.
>
> Please note that a 50% deduction has been applied on the claimed amount as you had no documentation for the age and value of the lost items."

Nævnet er blevet forelagt klagerens fortegnelse over bortkomne genstande, hvoraf fremgår, at kufferten er købt i 2015, og at det bortkomne tøj i form af 12 par shorts, 9 bluser, 13 T-shirts, 4 toppe og 8 par sandaler er indkøbt i 2016. Endvidere er der på listen anført et Videokamera fra 2015 og medicin indkøbt i 2016.

Nævnet er også blevet forelagt den øvrige e-mail korrespondance mellem parterne.

Af forsikringsbetingelserne fremgår blandt andet:

> "**Section 21 Baggage**
> …
> 21.1: **We** will pay for **your baggage** and personal items up to the limits shown on the List of Benefits (including **baggage**, clothing, electronic equipment, jewellery, laptops, cameras, mobile phones or other items you bring or buy on **your** trip), if **your** belongings are:
>
> 1. lost or damaged by fire or other natural disaster if locked in **your** accommodation abroad or a locked safety box;
> 2. stolen from locked accommodation **abroad** or from a locked safety box or locker, where there are visible signs of forced entry;

3. stolen from **you** while **you** are carrying them, when the theft is observed;
4. stolen from a locked boot or locked and concealed baggage compartment separate from the passenger compartment of a locked motorised vehicle or boat. There must be visible signs of forced entry into the boat or vehicle (however, see Section 21.3b); or
5. lost by a **common carrier**, accommodation or baggage storage provider while registered or checked in as **baggage** (written evidence/property irregularity report (P.I.R.) must be submitted) (however, see Section 21.3a);
6. damaged by a common carrier, accommodation or baggage storage provider while registered or
1. checked in as baggage (damage report/property irregularity report (P.I.R.) must be submitted)
2. (however, see Section 21.3a).

…

21.6: **We** will pay up to the maximum amount payable per claim, according to the List of Benefits. The value of your lost or damaged **baggage** and personal items are calculated according to the following principles:

1. The **insurance** shall cover the replacement cost of comparable new items, if the covered items are documented as less than two years old. However clothes must be documented as less than one year old.
2. For items more than two years old, purchased second-hand or already damaged, compensation will be fixed at the replacement cost of comparable new items less a fair deduction for deterioration due to age, wear and tear, reduced usability or any other circumstance. This also applies to items for which no documentation of age and value can be provided.
3. **We** may choose to have damaged items repaired or pay an amount corresponding to the cost of repair.
4. **We** have the option to replace a lost or damaged item with goods of a similar use and function, if we chose to do so.
5. The **insurance** shall cover the costs of replacing tickets, traveller's cheques, drivers license, credit cards, **securities** and passports. The costs include necessary transportation charges, fees, photos, etc., but not compensation for the time involved in replacing the items."

…

We reserve the right at any time to require **you** to present the original bills/receipts in order to document the value of the property in support of **your claim**."

Nævnet udtaler:

Klageren rejste med sin familie på ferie den 27/12 2016. En af familiens kufferter bortkom på udrejsen, og klageren har fremsat krav om, at selskabet betaler 1.414 GBP for den bortkomne kuffert med indhold. Han har til støtte herfor anført, at det ikke kan anses for rimeligt, at selskabet kræver, at der kan fremvises kvitteringer for brugt tøj og sko som betingelse for, at der kan ydes fuld erstatning.

Selskabet har udbetalt 850,12 EUR i erstatning for de bortkomne effekter, hvilket svarer til 50 % af klagerens krav. Selskabet har anført, at klageren ikke har kunnet fremlægge nogen dokumentation for de bortkomne genstande, der foruden kufferten hovedsageligt består af sædvanlig feriebeklædning. Selskabet har herved anført, at det fremgår af forsikringsbetingelsernes punkt 21.6, at tøj bliver dækket med nyværdien, såfremt det kan dokumenteres, at dette er under et år gammelt. Det fremgår også, at selskabet kan nedskrive erstatningen, såfremt der ikke findes dokumentation, som kan påvise værdien og alderen af det bortkomne.

Indledningsvis bemærker nævnet, at det påhviler forsikringstageren, at sandsynliggøre størrelsen og rigtigheden af det fremsatte erstatningskrav.

Nævnet bemærker endvidere, at selskabet i overensstemmelse med forsikringsbetingelserne må tillægges mulighed for et vist skøn over erstatningsopgørelsen i en situation som den foreliggende, hvor klageren ikke har kunnet fremlægge kvitteringer for de købte beklædningsgenstande mv., herunder alderen på dem.

Efter en gennemgang af sagen, herunder de stjålne genstandes beskaffenhed og mulige alder, finder nævnet efter en samlet vurdering, at erstatningen skønsmæssigt må forhøjes til i alt 75 % af klagerens krav. Selskabet skal derfor betale yderligere 25 % til klageren.

Nævnet har blandt andet lagt vægt på, at der er tale om almindeligt ferietøj, der mængdemæssigt svarer til, hvad der normalt kan være i en kuffert.

7. 90871

Som følge af det anførte

b e s t e m m e s :

Selskabet, Bupa Denmark Services A/S, skal betale klageren yderligere 25 % af 1.414 GBP til klageren. Beløbet skal tillægges renter i henhold til forsikringsaftalelovens § 24.

Klageren får ikke medhold i øvrigt.

Klagegebyret tilbagebetales.

Marianne Højgaard Pedersen
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