Ankenævnet *for* Forsikring

Den 2. august 2018 blev i sag nr. 91949:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Alpha Insurance A/S under konkurs
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

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Forsikringstageren har en bilforsikring i Carrot Insurance, som ejes af Alpha Insurance A/S under konkurs. I klageskema af 7/2 2018 til nævnet har klageren bl.a. anført:

> **"1. Statement of claim**
> I had an accident where I drove into a wall on Sunday 16th July. The emergency services were called by another occupant of a vehicle. I was taken to [hospital] with injuries to my head, spine, abdomen and various cuts and bruises. I had emergency surgery on a tear in my bowel from the air bag and seat belt impact.
>
> The insurers have taken an inordinate amount of time 12 weeks, to decide not to pay out based on a statement from the Ambulance Services who are using things I said at the scene of the accident as evidence. I was incoherent and concussed and I have no memory of the evening prior to the crash. The insurer is claiming I had been drinking and drove, which I deny and there is not evidence to prove otherwise. The statement from the ambulance service is factually incorrect and I am surprised and disappointed this has been the basis of their decision.
>
> I had been told during a phone call I would be paid out on the claim, to then be told I would not. I was also told on the phone I would receive a sum of money to be paid to me amounting to approximately £1500, which contradicts their decision of indemnity being declined, I asked for this in writing and have not received a response so a recording transcript would be needed. I was told I would need to pay for the damage to the wall, however, there has been another car accident in the same place since so I cannot be expected to pay for additional damage and I would like to know how this has been calculated. The wall is made in a similar way to a rockery.

I asked to go through the complaints procedure and was told that their decision was final and the case closed and if I was still unhappy to go through the Financial Ombudsman. I do not feel they have followed due process, failed to provide evidence for their decision and are avoiding a pay out. As the company is Danish owned the FOS in the UK cannot proceed my complaint.

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
To pay out as per the fully comprehensive cover I have paid for under my insurance policy. Since the correpsondence in October they have since said they will not pay the salvage payment for my vehicle. As that is my vehicle I expect to receive the monies paid."

Selskabet har i brev af 12/3 2018 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"On 16th July 2017 our policyholder was involved in a road traffic accident where she drove into a garden wall whilst driving at a speed of 50mph. She was admitted to the hospital by ambulance as a trauma patient.

In a statement from … Ambulance Service, who brought our policyholder to the hospital, it says that 'Patient had an argument with her boyfriend after a night of drinking, pt was trying to get away from him, got into her car and hit a garden wall head on at approx. 50mph'.

Our administrators Carrot Insurance received a verbal statement from the attending police constable … who advised that, in his opinion and professional experience, our policyholder was in fact well over the legal alcohol limit whilst driving the car. This was confirmed in an e-mail dated 19th October 2017.

In the 'General Exception' Section of the Policy wording (copy enclosed) under point 1.6 it says under what is NOT covered:

' ... Any liability, loss or damage arising while the insured vehicle is being: ...

1.6 driven by **you** or any person insured to drive, should it be proved to **our** satisfaction that the driver was under the influence of alcohol or drugs at the time of such loss or damage occurring. A conviction under the relevant law (including a conviction for failing to supply a specimen of breath, blood or urine) shall be deemed to be conclusive evidence that the driver at the time of the loss or damage was under the influence of alcohol or drugs.'

We are aware that our policyholder was not charged with drunk driving nor convicted of the same, however a conviction is not necessary for us to decline indemnity, when we have satisfactory evidence of intoxication.

On the English Ombudsman's homepage various comments on insurance matters can be found, including the item hereunder, on the subject of driving under the influence of alcohol.

In an article from April 24th, 2016 (attached) under the heading **'Burden of Proof'** the Ombudsman writes: 'In criminal cases, in order to meet a charge of drunken driving or driving under the influence, **the state is required to demonstrate beyond reasonable doubt** that a driver was indeed driving in such a state. In **civil cases**, however, such as claims under an insurance policy, the insurer need only show that the insured was, **on a balance of probabilities, driving under the influence**.'…

".... It is sufficient to sway the probabilities in its favour **if the insurer is able to produce circumstantial evidence** to demonstrate that the driver was under the influence of alcohol. **Examples** of circumstantial evidence upon which insurers often rely are **statements by police or emergency service personnel** at the scene of the accident, **doctors or nurses who attended to a driver** who was admitted to hospital, **eye witnesses** who were able to observe the driver's demeanor, witnesses who can account for the driver's whereabouts prior to the collision and who can attest to whether he or she consumed alcohol, security or video footage from restaurants or bars.

If the circumstantial evidence establishes on a balance of probabilities that a driver was under the influence of alcohol or drugs at the time of an accident, the Ombudsman will support the insurer's decision to reject the claim.'

From the evidence provided in the statement from … Ambulance Service, that our policyholder '...had an argument with her boyfriend after a night of drinking...' and from the verbal statement from the attending police constable, who advised that in his opinion and professional experience, our policyholder was well over the legal alcohol limit whilst driving the car, it has been proved to our satisfaction that our policyholder was under the influence of alcohol when hitting the garden wall head on.

We therefore maintain our position to decline the claim, as supported by the policy wording and explained in the various correspondence."

Klageren har herefter i mail af 25/4 2018 til nævnet bl.a. anført:

"I understand the confusion as to how the accident happened and it is all very confusing. But, as I can't remember anything due to the severe head injury, it is frustrating for me to understand too.

The police officer clearly states his matter of opinion. However, this is just an opinion not fact. On the other hand, I can understand why he assumed such a thing since the accident was so bizarre.

I would really appreciate it if somebody could revise the situation or could help with this as I'm having to pay a stupendous amount of money for a car I no longer have, for something I genuinely am innocent for. It states on the police officers letter '[the complainant] is innocent', which I know I am. I think it should be taken into consideration that whatever was said that evening, I did have a huge hole in my head and other severe injuries."

Nævnet har fået forelagt bilag fra sagen, hvoraf enkelte gengives nedenfor.

Af rapport af 17/7 2017 fra ambulancefirma fremgår bl.a.:

> "At 23:28:12 on 16-Jul-2017 we attended the patient below who we believe is registered with your practice …
> …
> The patient advised in their own words) that the reason for the call was:
>
> *'Pt had an argument with her boyfriend after a night drinking alcohol, pt was trying to get away from him. Got into her car and hit a garden wall head on at approx 50mph. Smoke was coming out of the hood and bystanders pulled her out of the car. Placed her on the pavement and maintained c-spine control.'* "

En politimand, som var til stede på ulykkesstedet, har i mail af 19/10 2017 til selskabet anført:

> "In relation to the below the intoxication of the female is my opinion only my suspicion on the morning of the incident was that she was that intoxicated she should be arrested for drink driving; however as explained due to some administration errors on the police's part we were unable to obtain the relevant samples to either prove or disprove any element of drink driving. I suppose in plain terms in the eyes of the law [the complainant] is innocent as she never was charged or convicted at court."

Af forsikringsbetingelserne for Carrot Insurance fremgår bl.a.:

> "**THESE GENERAL EXCEPTIONS APPLY TO THE WHOLE OF THE INSURANCE**
> …
> **What is NOT covered**
> …
> Any liability, loss or damage arising while the **insured vehicle** is being:"
> …
> 1.6 driven by **you** or any person insured to drive, should it be proved to **our** satisfaction that the driver was under the influence of alcohol or drugs at the time of such loss or damage occurring. A conviction under the relevant law (including a conviction for failing to supply a specimen of breath, blood or urine) shall be deemed to be conclusive evidence that the driver at the time of the loss or damage was under the influence of alcohol or drugs."

<u>Nævnet udtaler:</u>

Klageren var involveret i en bilulykke den 16/7 2017 om aftenen, da hun kørte ind i en havemur med 50 mil i timen (ca. 80 km/t). Klageren blev efterfølgende kørt med ambulance til hospitalet, hvor hun blev behandlet for flere skader. Klageren ønsker forsikringsdækning for skaderne på sin bil.

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Selskabet har afvist at yde forsikringsdækning med henvisning til, at årsagen til ulykken var, at klageren var beruset, hvilket ikke er dækket af forsikringen, jf. punkt 1.6 i forsikringsbetingelsernes generelle regler om undtagelse fra dækningen.

Klageren har anført, at der ikke er bevis for, at hun kørte bil beruset, og at hendes udtalelser efter ulykken skal bedømmes ud fra, at hun havde slået hovedet og fået andre voldsomme skader. Klageren har også anført, at hun ikke kan huske, hvad hun foretog sig forud for ulykken pga. den voldsomme skade på hendes hoved.

Det er oplyst, at der ikke blev foretaget nærmere undersøgelse af, om klageren i forbindelse med ulykken var alkoholpåvirket, ej heller i form af blodprøve.

Nævnet finder efter en samlet vurdering, at selskabet efter det foreliggende ikke med fornøden sikkerhed har bevist, at klageren var alkoholpåvirket i forbindelse med ulykken. De fremlagte erklæringer og udsagn fra politi og ambulancefirma kan efter deres skønsprægede og generelle karakter ikke føre til et andet resultat.

På denne baggrund skal selskabet anerkende, at ulykken ikke er undtaget fra dækning under pkt. 1.6 i General Exceptions, og genoptage sagsbehandlingen.

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Som følge heraf

b e s t e m m e s :

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Selskabet, Alpha Insurance A/S under konkurs, skal anerkende, at ulykken ikke er undtaget fra dækning i henhold til General Exceptions, pkt. 1.6, og genoptage sagsbehandlingen.

Klagegebyret tilbagebetales.

Peter Thønnings