Ankenævnet *for* Forsikring

Den 2. august 2018 blev i sag nr. 91956:

xxxxxxxxxxxxxxxxxxxxx
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xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

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Forsikringstageren har rejseforsikring. Han klager over, at selskabet har afvist at yde forsikringsdækning for nogle genstande, som under hans rejse blev stjålet fra et telt, mens han sov. I klageskema af 26/2 2017 til nævnet har klageren bl.a. anført:

> "**1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.**
> I was on a camping trip from [land1] to [land2] with [selskab1] out of [land1]. When we were at the [hotel] on July 15, 2017, my tent was robbed in the nighttime. They stole my backpack, camera, cash, and shoes. The camera was a Sony Cyber-Shot Model DSC-HX60V. There was about $1200 in cash. The shoes were worth about $100. When I woke up in the morning, I saw that my backpack and shoes were missing. The robbers had gone through the backpack and left behind things they didn't want. I notified the tour leader immediately and we went to the police station to file a report. Since then I've been corresponding with BUPA and they have denied the claim. Their argument is that because my tent was not locked and there were no signs of breaking in, the claim is invalid. I told them that it's impossible to lock tents of this sort. They're easily opened by zippers. The robbers simply had to unzip my tent and take what they wanted. Unfortunately, the fence that surrounded the campground had a large hole in it, so that it was easy for the robbers to get into the campground and take what they wanted. Another camper had her new cell phone taken and others had shoes taken. I believe that their policy is written for a hotel room that was unlocked. I told BUPA that I couldn't possibly lock my tent. The zippers did not allow this. I'm enclosing a copy of the policy I paid for, and there's nothing about not covering tents in the policy. In my opinion, the company should have specifically stated that tents were not covered.
>
> **2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?**
> I would like the company to reimburse me for my camera, shoes and cash."

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Selskabet har i mail af 26/3 2018 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

> "The insurance purchased by the Complainant is an international travel insurance plan purchased online through our partner [selskab1] covering the Complainant worldwide except in his country of permanent residence, [land3]. The insurance plan was purchased May 14, 2017. It commenced July 1, 2017 and expired August 18, 2018.
>
> The dispute is regarding a claim for stolen luggage during the Complainant's trip from [land2] to [land1].
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> **Case Summary**
> On 18 August 2017 the Company received a claim explaining that the Complainant had his luggage taken from his tent while on a safari in Africa.
>
> When the Complainant woke up on 15 July in his tent his backpack and shoes had been taken from his tent. He found his backpack outside his tent but missing was a camera and USD 1200.
>
> On 2 September 2017 the Company rejected the claim as the incident had not been observed. The Company received a complaint from the insured on December 6, 2017, which the Company responded to on December 19, 2017 and furthermore another complaint as the claimant complained directly to [selskab1]. This complaint was answered on February 16, 2018. In the complaint from December, 6 we also received the following description of the incident.
>
> '... We got in our tents to go to sleep, and in the middle of the night the thieves looked into my tent (the window shades were open because it was hot), saw where my backpack was, and reached into my tent through the bottom (I'm not sure if they unzipped it or if it was already unzipped)--took out the backpack and also stole a pair of my shoes. Unfortunately, the backpack was near the opening of the tent, rather than at the other end by my head. I didn't notice anything happening. I slept through the whole thing.'
>
> The conditions stipulate the following:
>
> '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, jewelry, laptops, cameras, mobile phones or other items **you** bring or buy on **your** trip), if **your** belongings are:
>
> a. lost or damaged by fire or other natural disaster if locked in **your** accommodation **abroad** or a locked safety box;
> b. stolen from locked accommodation **abroad** or from a locked safety box or locker, where there are visible signs of forced entry;
> c. stolen from **you** while **you** are carrying them, when the theft is observed;
> d. stolen from a locked boot or locked and concealed baggage compartment separate from the passenger compartment of a locked motorized vehicle or boat. There must be visible signs of forced entry into the boat or vehicle (however see Section 21.3 b); or

e. 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 21.3 a);
f. damaged by a **common carrier**, accommodation or baggage storage provider while registered or checked in as **baggage** (damage report/property irregularity report (P.I.R.) must be submitted) (however see Section 21.3 a).

We will also pay for the cost to replace **your** passport, credit cards and travel documents if they are:

g. lost or damaged by fire or other natural disaster if locked in **your** accommodation abroad or a locked safety box;
h. stolen from locked accommodation abroad or from a locked safety box or locker, where there are visible signs of forced entry;
i. stolen from you while you are carrying them, when the theft is observed.'

Furthermore, we refer to the exclusion in Section 21.3.m:

'21.3: **We** will not cover or pay for:
m. **simple theft**, where **you** do not observe the theft occurring;'

See also:

'21.5: We shall only be liable to pay compensation if the baggage is handled and stored securely and if you exercise due care. Not effectively supervised means:
a. leaving **your baggage** unsupervised in a public place to which the public has access,
b. leaving **your baggage** with a person **you** have not previously met,
c. leaving it in any position where it can be taken without **your** knowledge,
d. leaving it such a distance from **you** that you are unable to prevent it being taken.'

As the baggage was placed in a tent while the Complainant was sleeping and the tent was not locked, the theft is not covered according to the condition as, 1) the items were not stolen from a locked accommodation, 2) the items were not stolen from the complainant while being carried by or on him and the theft was not observed, 3) the items were left in a position where they could be taken without the Complainant's knowledge. Please also notice that had the incident been covered there is a USD 250 maximum for cash.

Conclusion:
Based on the above the Company maintains its decision to reject the claim."

Klageren har i mail af 27/3 2018 til nævnet bl.a. anført:

"Here is what I signed up for with [selskab1] Travel Insurance [from the webpage]:

'**How travel insurance can help if your bags are stolen or damaged.**

Benefit	**Found in**
Baggage delay	All policies
Damaged baggage while checked-in	All policies
Stolen baggage	All policies except Brazilian
Bags lost by a carrier in transit	All policies

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Stolen passports	All policies except US & Brazilian
Prescribed medication	All policies

What's not covered by travel insurance.
Travel insurance isn't designed to cover everything. Common claims we see where there's no cover include:

- Leaving your gear behind
- Not keeping an eye on your things and they get stolen
- Leaving your gear in an unlocked car
- Where you don't get a report from an authority'

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1) This is what I signed up for. I had no idea that they would send the claim to BUPA Global, which would have different criteria for what's covered and what's not.

2) BUPA Global states in 21:1 that they will pay for baggage and personal items 'stolen from locked accommodation abroad or from a locked safety box or locker, where there are visible signs of forced entry'.

My reaction is this: the policy was obviously written in terms of a hotel room, safe or structure, not a tent. There's no mention of a tent. I believed when I got in my tent at night with my stuff, I would be 'safe'. Additionally, I was in a 'safe' campground with a fence around it (that unfortunately had a giant hole in it) and was patrolled by security guards. The tents we used on the trip **COULD NOT BE LOCKED**. It was physically impossible because the zippers didn't allow for use of a lock. Also, nobody locked their tents at night. If I had to go to the toilet, a locked tent would have been a bad idea. Additionally, the policy states that there have to be visible signs of forced entry. To get in a tent, there's no need to 'force' the entry. All the robber had to do was unzip the tent, so there would be no signs of forced entry.

They say that they won't pay if the theft is not observed. Again, this was impossible, as I was asleep. Third, they won't pay if the items were in a position where they could be taken without my knowledge. Since I was fast asleep, there was no way that I would notice if something was being taken.

In other words, they've set up conditions for which they won't pay that would have been impossible for me to meet. I would have had to lock my tent (impossible), stay up all night and watch my possessions (impossible) and somehow arrange everything in my tent so that nothing could be taken (impossible). Their policy is simply not written for tents. If tents are not covered, they should have clearly stated that thefts from tents are not covered. If they had stated that, I wouldn't have purchased the policy.

I purchased this policy in good faith. I'm making this claim in good faith. To me it seems like the company has gone out of their way not to honor my claim. I'm making the claim for my camera, some shoes, a backpack and some money. If they only cover $250 maximum, that's better than nothing. I've used this company several times and never made a claim. The company is recommended by several travel agencies. This is not the way that customers should be treated."

Selskabet har i mail af 18/4 2018 til nævnet bl.a. anført:

"Reply to comments regarding case from Complainant:
1) It is important here to add the full content from the website:
https://www.worldnomads.com/travel-insurance/whats-coveyed/baggage
…

'**What's not covered by travel insurance.**
Travel insurance isn't designed to cover everything. Common claims we see where there's no cover include:

- Leaving your gear behind
- Not keeping an eye on your things and they get stolen
- Leaving your gear in an unlocked car
- Where you don't get a report from an authority

This is not a full list of what's covered and not covered. There are item limits and conditions that apply, so for more information check out our article on baggage cover and personal effects and read your policy carefully before you buy.'

As you can see, it is mentioned just under the list (not included by Complainant) that this is not the full list of what is covered and not covered. Furthermore, the text refers to the policy conditions.

2) The member states that it was impossible to lock the tent and that there were signs of forced entry to the fence surrounding the camp. Nevertheless, the fact that the tent could not be locked or that people had access to the camp does not mean that the items would then be covered by the insurance. Only in the instances mentioned in the conditions would the insurance provide cover. Thus equally in connection with a house or a hotel room where the locks did not work or where somebody left a window open due to heat, the Company would not provide cover. We would also like to refer to insurance board case no. 53.663 also regarding stolen items from a tent.

Efterfølgende har klageren og selskabet fastholdt deres synspunkter i mails af 20/4 2018, 8/5 2018, 16/5 2018 og 24/5 2018 til nævnet. Nævnet har fået forelagt bilag fra sagen.

Nævnet udtaler:

Klageren fik natten mellem 14/7 og den 15/7 2017 stjålet sin rygsæk, kontanter, sko og et kamera fra et telt, mens han sov. Klageren ønsker erstatning for genstandene.

Det fremgår af forsikringsbetingelserne, at selskabet dækker stjålet bagage ved indbrud, hvis tyveriet sker fra aflåst rum/indkvartering, og der er synlige tegn på opbrud.

Nævnet lægger til grund, at teltet ikke var aflåst og at der ikke var synlige tegn på opbrud.

Nævnet finder i overensstemmelse med praksis – jf. herved blandt andet nævnets afgørelser i sagerne nr. 53.663, 70.608 og 74.598 – ikke grundlag for at kritisere selskabets afgørelse.

Nævnet har blandt andet lagt vægt på, at teltet ikke var låst, og at der ikke var tegn på opbrud, hvorfor der ikke er tale om indbrud, men derimod om simpelt tyveri.

Nævnet har også lagt vægt på, at det fremgår af forsikringsbetingelserne, at selskabet ikke dækker "**simple theft**, where **you** do not observe the theft occurring", og at klageren ikke bemærkede tyveriet, da han sov.

Det, som klageren i øvrigt har anført, kan ikke føre til andet resultat.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Peter Thønnings
Udskriftens rigtighed bekræftes

Carsten Sennels