Ankenævnet *for* Forsikring

Den 23. januar 2019 blev i sag nr. 92258:

xxxxxxxxxxxxxxxxxxxxx
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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 terminsforsikring (Mortgage Payment Protection Insurance). I klageskema af 25/4 2018 til nævnet har klageren bl.a. anført:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.
>
> I took out this mortgage protection policy in June 2007. I am self employed and pay a premium to cover me for 1500 pounds of cover.
> I have had 2 previous claims in 2011 and 2013, and on each occasion was paid, as expected, 1500 pounds.
> On this occasion Trent changed the monthly amount paid to 522,18 pounds.
> I had no reason to suspect that the insurer would change their interpretation of the rules regarding income.
> The issue is the defination of normal income for self employed. i.e 'the monthly average of the annual income you declared to the inland revenue on your self assessment tax return for the previous tax yearl'
> The average monthly amount of annual income I declared was 2,750 pounds (33,000 pounds for the year)
> Trent have now decided that the profit from my business should be used to assess my claim, namely 75% of 8,355 pounds.
> I have asked them to explain where this interpretation of self employed income is written in the contract.
> They didn't comment further except to say that they had made their decision.
>
> 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 insurance company to honour their obligation to pay the full amount of my mortgage protection insurance."

Selskabet har i brev af 31/5 2018 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"We refer to your letter of 16th May 2018 to which we would like to provide our full reply.

We understand that [klageren] is of the opinion that her mortgage protection policy should cover her £1,500 mortgage repayment, regardless of the level of cover the policy provides (see policy terms and conditions). [Klageren] has confirmed that she paid the premium to reflect the £1,500 and therefore the claim should honor this benefit amount.

The policy commenced on 24th June 2007 and the policy schedule and terms and conditions were supplied to [klageren] following the purchase. [Klageren] has had two previous claims for sickness during the policy period, in 2013 and 2011, and both previous claims were paid using the full £1,500 monthly benefit. This was unfortunately an oversight by the previous assessors and was in fact not in accordance with the policy terms and conditions.

The recent claim period is related to the current period of sickness, as [klageren] has been signed off work with dizziness from 21st December 2017 to 5th March 2018. [Klageren] submitted the claim form and this was received by our administrator Trent Services Limited (Trent) on 22nd February 2018.

During Trent's assessment of the claim, they used the Self-Employed Tax Return supplied to validate the salary, where it shows the profit from self-employment as £8,355 (being the annual profit). As the policy only allows benefit of a maximum of up to 75% of your Normal Monthly Income the monthly benefit was consequently reduced to £522.18, which was the maximum that [klageren] is entitled to receive. [Klageren] believes erroneously that it is the income for her business of £33,000 that should be used as the basis for the benefit calculation, however, the policy is personal and only protects up to a maximum of 75% of the personal income of [klageren] after relevant deductions i.e. the £8,355 per year.

We have reviewed the claim and taken [klageren] comments into consideration, however, we are unable to alter the original decision to reduce the monthly benefit for the 2017-18 claim.

Although we do appreciate that the previous two claims did not have the benefit reduced, this was, as stated above, unfortunately an oversight by the previous assessors. Each claim is assessed on its own merits and does not set a precedent for any future claims.

When assessing a claim and validating the income, we use the terms and conditions supplied. In the current case they state;

'3. What The Words Mean
Normal Income - Means: Self Employed - the monthly average of the annual income You declared to the Inland Revenue on Your self-assessment tax return for the previous tax year (the tax year immediately prior to the tax year in which the claim occurs)

4. The Level of Cover This Policy Provides
The maximum Monthly Benefit allowable under this policy is £2,500or 75% of Your Normal Income, whichever is the lower. At the point of Application You can apply for additional cover of up to 100% of Your monthly Mortgage Payment, subject to the maximum Monthly Benefit allowable, as detailed above'.

Although the mortgage repayment is above the £1,500 benefit originally chosen, this is irrelevant as the policy is still dependent upon [klagerens] income and therefore the maximum we can pay is 75% of the Normal Income.

[Klageren] received a premium refund following the benefit being capped, the administrators refunded her £165.09 on 23/03/2018. Her reduced claim was found acceptable and Trent made payment to her for the reduced monthly benefit of £522.18 from 21/12/17 - 23/04/18.

We maintain our position to decline the claim for the amount of £1,500 per month, as supported by the policy wording and as already explained in the various correspondence, which the Board has already been provided with."

Klageren har i mail af 15/6 2018 til nævnet bl.a. anført:

"I have received a letter from Trent to advise me that Alpha Insurance have been declared bankrupt on the 8th May 2018. A new insurance company has been appointed … based in London.
Can you please clarify how this impacts me?
Secondly, the new contract I have received is identical to the one I had with Alpha, except for one very important detail.
The section clarifying normal income for self employed has been modified with a note as follows : ' Please note: this means Your personal income and not that of your business'
Trent and Alpha have not been able to explain satisfactorily the reason for rejecting' the monthly average of annual income declared to the Inland revenue. On the the previous two claims, which Trent and Alpha assert were wrongly assessed, gross income for self employment was used for the calculation, and this is why i took the policy in the first place. It would appear that Trent have realized that for self employment income, the previous Alpha contract did not cover their joint interpretation."

Klageren har i indlæg af 26/6 2018 til nævnet bl.a. anført:

"In reply to the Alpha Group Attornay response dated 31/5, I don't believe the previous two claims were wrongly assessed, as it was what I was assured would happen when I first took out the policy, namely to provide mortgage cover of £1500 based on my level of self employed income. I paid a premium of around £90 per month for that level of cover.
The definition of 'normal income' for self employed is key to this issue. It is quite clear that the monthly average of the annual income declared to the inland revenue is gross income. In my case £2,500 per month, £33,000 annual income. Operating (including mortgage costs) and Capital costs are deducted to arrive at the business profit. Alpha now want to use the profit for calculation purposes, but this is not specified in the policy definition of normal income and therefore the gross income should be used as in my previous claims."

Selskabet har i brev af 6/7 2018 til nævnet bl.a. anført:

> "We refer to [klageren] comments of 26th June 2018, to which we would like to provide our reply.
>
> [Klageren] has purchased this insurance policy in her private capacity. The policy covers up to 75% of her personal *Normal Monthly Income*. The annual profit received by [klagerens] as income from her self-employment was f8,355 and this has to be distinguished from the gross income of her business.
>
> [Klageren] has already received a refund of premium following the benefit being capped.
>
> We maintain that the decision to reduce the monthly benefit for the 2017-18 claim is correct and await the adjudication of the Board."

Til dette har klageren i indlæg af 10/10 2018 til nævnet bl.a. anført:

> "With reference to the reply from Alpha Insurance on the 6th July, they are now using terminology like Personal Income which doesn't exist in the policy documentation. Using business profit as the criteria for assessing claims is not detailed in the policy. The two previous claims were correctly assessed based on the policy wording,"

Nævnet har fået forelagt bilag fra sagen.

Af forsikringsbetingelserne fremgår bl.a.:

> "**1. ELIGIBILITY CRITERIA OF THIS POLICY**
> **You** can be covered under this **Policy** if on the **Start Date**:
>
> **You** are taking out this **Policy** to insure the **Mortgage Payments** on the property that is **Your** main private residence
>
> …
> **3. WHAT THE WORDS MEAN**
> Some of the words and phrases **We** use in these **Policy** terms and conditions have special meanings and these are shown below in **bold type** with their meanings alongside them. Except where the context otherwise requires, the masculine shall include the feminine, the singular shall include the plural and vice versa as appropriate.
> …
> **Normal Income**
>
> Means:
> **Employed** – the average monthly income **You** have received from **Your employer** in the twelve months immediately prior to **Your** claim.
>
> **Self Employed** – the monthly average of the annual income **You** declared to the Inland Revenue on **Your** self-assessment tax return for the previous tax year (the tax year immediately prior to the tax year in which the claim occurs).
> …

4. THE LEVEL OF COVER THIS POLICY PROVIDES
The maximum **Monthly Benefit** allowable under this **Policy** is £2,500 or 75% of Your Normal Income, whichever is the lower. At the point of **Application You** can apply for additional cover of up to 100% of **Your** monthly **Mortgage Payment**, subject to the maximum **Monthly Benefit** allowable, as detailed above.

The **Monthly Benefit** amount **You** have selected is detailed on **Your Certificate of Insurance**."

Nævnet udtaler:

Klageren er selvstændig erhvervsdrivende. Hun har tegnet en terminsforsikring, der sikrer hende et månedligt beløb til terminerne på hendes privatbolig i tilfælde af sygdom/ulykke eller arbejdsløshed. Hun har tegnet dækningen med en udbetaling på 1500 GBP om måneden, og hun har fået dette beløb udbetalt for sygeperioder anmeldt i 2011 og 2013.

Klageren anmeldte sygdom igen den 22/2 2018, og et administrationsselskab har på selskabets vegne udbetalt nedsatte ydelser i perioden 21/12 2017 – 23/4 2018. Selskabet har nedsat klagerens månedlige dækning til 522,18 GBP med henvisning til forsikringsbetingelsernes punkt 4, hvorefter "The maximum **Monthly Benefit** allowable under this **Policy** is £2,500 or 75% of **Your Normal Income**, whichever is the lower".

Normal Income er i forsikringsbetingelserne defineret som "**Employed** – the average monthly income **You** have received from **Your employer** in the twelve months immediately prior to **Your** claim. **Self Employed** – the monthly average of the annual income **You** declared to the Inland Revenue on **Your** self-assessment tax return for the previous tax year (the tax year immediately prior to the tax year in which the claim occurs)".

Klageren kræver udbetaling af en månedlig ydelse på 1500 GBP. Hun har anført, at definitionen af Normal Income omfatter bruttoindkomsten, og at hun har selvangivet en bruttoindkomst på 33.000 GBP for skatteåret. Hun har endvidere anført, at administrationsselskabet efter selskabets konkurs har tilbudt hende en ny forsikring hos et nyt selskab med identisk dækning, dog med en tilføjelse i definitionen på Normal Income om "**Please note:** This means **Your** personal

income and not that of **Your Business**". Dette tager klageren som udtryk for, at administrationsselskab har erkendt, at den tidligere formulering ikke har været dækkende.

Selskabet har anført, at den månedlige ydelse skal fastsættes på baggrund af klagerens fortjeneste for skatteåret, som er 8.355 GBP. Selskabet har endvidere anført, at forsikringen dækker klageren personligt, og at dækningen beregnes på grundlag af hendes personlige indkomst og ikke virksomhedens indkomst.

Efter en gennemgang af sagen finder nævnet, at det ikke fremgår tydeligt af forsikringsbetingelserne, om det er bruttoindkomsten eller fortjenesten, som skal danne grundlag for "Normal Income". Det må efter nævnets opfattelse medføre, at den gunstigste fortolkning for klageren må lægges til grund. Nævnet finder herefter, at selskabet skal lægge bruttoindkomsten til grund og anerkende, at klageren har ret til et månedligt beløb på 1500 GBP for sin sygeperiode 21/12 2017 – 23/4 2018.

7. 92258

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 klageren har ret til et månedligt beløb på 1500 GBP for sin sygeperiode 21/12 2017 – 23/4 2018 og skal udbetale yderligere erstatning til klageren med tillæg af renter.

Klagegebyret tilbagebetales.

Jens Kruse Mikkelsen
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