Ankenævnet *for* Forsikring

Den 12. september 2018 blev i sag nr. 92270:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har sygeforsikring. Han klager over størrelsen af den erstatning som selskabet har udbetalt i forbindelse med, at han blev indlagt og gennemgik en brokoperation.

I klageskema af 26/4 2018 til nævnet har klageren bl.a. anført:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.
> The BUPA clalm acceptance 11 months later, suggesting Euro 8,586 lnstead of Euro 38,000 based on article 6.6, is unacceptable for following reasons:
> 1- When I was first insured by BUPA l was only taken on as a client under a premium loading that is without 'normal conditions.' Because of my condition I was paying a 90 per cent premium loading due to 25 per cent loading for high BMI, 50 percent loading for gastric banding, and a 15 per cent loading for hyperthyroidism. Moreover, it would only make sense that any treatment or medical procedure I undergo will have higher risk and take longer. As my surgeon Dr. … says 'the operation was far more complex than expected, because of the multiple operations before, the repair was extremely complex. Any other surgeon would have spent at least 10 hours operating.' This demonstrates that the specific circumstances of the surgery were unusual.
> 2- As you should know, indemnity means a guarantee or assurance to put the insured in the same position he was immediately prior to the happening of certain event. So, the insurer undertakes to make good the loss. According to this principle, the insurer agrees to compensate the insured for the actual Loss suffered.
> 3- Principal of utmost good faith was respected as I have declared everything in my health application forms in 2006 and also in 2014.
> 4- In Bupa Insurance condition, under Article 6.1 the insurance shall cover the medical expenses incurred by the insured in accordance with the cover chosen and applicable list of reimburse-

ments. The benefits for which the expenses are covered end the reimbursement rates are stated in the list of Reimbursements (In my case at 100%).
5- Bupa cannot use article 6.6 as a defense, while simultaneously tell me that I am covered for 100% of the costs of the hospital with a max of E M 1.65
6- One cannot apply the CPT Codes provided by Best Assistance when there are specific circumstances to the case, as explained above. Furthermore, these CPT Codes were calculated based on regular cases where the client is paying an insurance premium of $ 1,000 USD, in BUPA's case for instance. However, the premium I paid to BUPA Global between Oct. 2016 and Oct. 2017 was $11,867, 11 times the regular premium because of my condition.
Thus, the codes should be a starting point for the calculation of my claim and not the basis of my claim.

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
I would like to emphasize the fact that I was taken on as a client under specific circumstances; So, I was paying a loaded, higher premium because of my health conditions. My argument in filling this complaint form is that my surgery cost more due to my health condition, which is why my claim is higher than the usual cost, so this fact should be considered when reimbursing my claim, as it was when I was accepted as a client.
Thus, I demand that BUPA Global pays the full claim amount of 38,000 Euro (excluding
The deductible) with an additional interest rate of 8 per cent."

Selskabet har i brev af 17/5 2018 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"Bupa Global (the Company) has received the complaint on 1 May 2018 via the case portal of Ankenævnet for Forsikring. The complaint has been submitted by the Complainant's insurance broker, … .

The Complainant has been insured under an individual health insurance, the International Health and Hospital Plan which has been concluded between the Company and the Complainant (see Annex 1- Brochure /policy conditions). The Complainant was insured in the period from 1 October 2014 until 1 October 2017 having as coverage a Hospital Plan with a yearly deductible of USD 1,600,-. Due to past medical history, the Complainant was medically underwritten, and the policy was accepted with a medical loading of 25% for high BMI, a medical loading of 50% for gastric banding and a medical loading of 15 % for hypothyroidism.

In connection with the Complainant's surgery on 12 May 2017 for abdominal wall hernia with reconstruction of the abdominal wall, the Complainant has complained as the Company has reimbursed a partial amount of EUR 8,898,- despite the fact that the total amount of the bill from the Complainant amounted to EUR 38,000,-, and surgery costs are covered 100% up to the annual maximum of USD 2,000,000 according to the List of Reimbursements.

The Complainant was operated on 12 May 2017 at … Hospital in …, … and according to Dr …, when the Complainant was discharged, he settled the amount of EUR 38,000,- in cash to the surgeon, Dr … . This payment should cover both the Complainant's hospitalisation bill from 12 May 2017 to 13

May 2017 at … Hospital on LBP 3,750,000,- corresponding to approx. EUR 2,084,- as well as Dr … surgical fees which the Company must conclude to be EUR 35,916,-.

The Company was first informed about the Complainant's hospitalisation on 29 May 2017 when the Complainant sent an email to Bupa Global Assistance (our 24/7 medical centre offering assistance in case of illness and emergency) notifying the Company about the hospitalisation and surgery which had taken place on 12 May 2017.

On 31 May 2017 Bupa Global Assistance sent a retroactive guarantee of payment to Best Assistance in …. Best Assistance in … is Bupa Global's service partner helping Bupa Global with guarantees of payment and billing questions for insured being hospitalised in ….

In the document dated 11 May 2017 from Dr … (attached to the complaint), which the Company received on 29 May 2017 together with the Complainant's notification of his surgery, Dr … states that the Complainant needs a total abdominal wall repair and has listed CPT code 49565 and CPT 14000 in his medical certificate. The total hospitalisation is estimated to approx. USD 25,000,- corresponding to EUR 20,951,-.

In the subsequent document dated 12 May 2017 from Dr … after the surgery (attached to the complaint), Dr … now confirms that the total costs for the Complainant's surgery have amounted to EUR 38,000,-. Dr … has not mentioned any new CPT codes in the statement dated 12 May 2017 which could explain the substantial increase in his fees.

CPT codes (current procedural terminology) are a set of medical codes maintained by the American Medical Association. The CPT codes describe exactly what services a healthcare provider has performed for a patient. CPT codes are an integral part of the billing process which is the reason why Dr … has indicated these CPT codes in his medical certificate dated 11 May 2017.

The CPT codes that Dr … has indicated to describe the medical services rendered to the Complainant in his medical statement are as mentioned CPT code 49565 which is a description for: 'Repair incisional (abdominal) hernia, reducible, with or without prosthesis, recurrent, with total abdominal repair'. Furthermore Dr … has stated CPT 14000 which is a definition for: 'Adjacent tissue transfer or rearrangement: defect up to 10 sq cm'.

Best Assistance in … has used the same CPT codes as the basis for their price estimate as Dr …, and has furthermore added one additional CPT code which Dr … had not listed e.i. CPT 15831: 'excission, excessive skin and subcutaneous tissue including lipectomy'.

It is erroneous to state that CPT codes are used in regular cases where clients are paying an insurance premium of USD 1,000,-. The use of CPT codes in hospital billings are not at all related to the insurance premium paid. Healthcare professionals need to identify the professional services they provide and to report those services in a way that can be universally understood, and the CPT codes are used to identify services for payment.

The Complainant argues that due to his past medical history of previous operations, it is not surprising that the medical procedure he underwent had a higher risk of taking long time, hence the medical costs of in total EUR 38.000,- as the surgery took 6 hours.

As explained to … in email dated 27 March 2018 it is not the time used that influences the cost of a hospital bill, the price of a surgery is based on what is performed during the operation (see Annex 2). The Company receives hospital billings from healthcare providers all over the world and can confirm that the time used is absolutely not part of the billing elements on this wide range of international hospital bills that the Company receives.

The CPT codes used by Dr … should however acurately reflect the services rendered during the operation, and Dr … has not indicated any other CPT codes in connection with the surgery than the two above CPT codes.

As Best Assistance is Bupa Global's service partner in … having local knowledge about surgical billing charges, the Company asked Best Assistance to review the Complainant's hospital admission and services rendered.

Best Assistance reverted with following information:
The hospital bill from … Hospital amounted to: LBP 3,750,000,-
Surgeon's fees, CPT code 49565, customary charge in …: LBP 4,140,690,-
Surgeon's fees, CPT code 15831, customary charge in …: LBP 1,161,525,-
Surgeon's fees, CPT code 14000, customary charge in …: LBP 1,615,935,-
Parietex mesh large: LBP 2,200,000,-
Pre-op tests, pathology: LBP 3,000,000,-
Total: LBP 15,868,150,-

The above amount of LBP 15,868,150,- corresponds to approx. EUR 8,586,-.

The Company must point out that acceptance of the insurance coverage with a medical loading for a diagnosis means that the diagnosis is covered under the policy despite past medical history as opposed to an exclusion for the diagnosis in question. Having a medical loading thus means that the diagnosis is covered in accordance with the valid policy conditions.

The Company has, therefore, referred to the policy conditions in the insurance guide, Article 6.6 in connection with the hospital billing of EUR 38,000,- in which it is stated that reimbursements shall be limited to the usual, customary and reasonable charges in the area or country in which the treatment is provided. In the retroactive guarantee of payment sent to Best Assistance it was stated the once the deductible is met, Bupa Global reimburses reasonable and customary expenses in relation to the hospitalisation (see Annex 3). Bupa Global has based the reimbursement of EUR 8,586,- on the CPT coding received from Dr … and Best Assistance's review of customary charges in … for the respective CPT codes.

It should be noted that Bupa's timeline for processing of the hospital bill from … Hospital and Dr …'s medical fees were admittedly long, the processing of the bills took 11 months. The reason for this time delay was that the Complainant's policy was under investigation by Bupa Global's sanction team as the Complainant is the cousin to…. .

Bupa had sent a transfer in the name of the Complainant for a reimbursement of EUR 4,146,59,- on 24 April 2017 with the Complainant's residential address in … mentioned in the transfer details. This transfer was returned by the banks to the Company. The Company sent the transfer again on 22 May 2017, this time in the name of the Complainant's wife again with the … residen-

tial address mentioned in the transfer details. The transfer was yet again returned by the banks to the Company.

The outcome of the investigations by Bupa Global's sanction team showed that there were no sanctions in relation to the Complainant and after receipt of a new residential address in …. from the Complainant, the transfer of EUR 4,146,59,- was sent again with the new residential address in … in the transfer details, and this transfer was well received on 8 February 2018.

After the completion of the sanction team's investigations of the Complainant's policy, the pending hospital bill of EUR 38,000,- was processed on 20 April 2018. A reimbursement of EUR 8,586,- plus an interest rate of 8% for the period from 23 October 2017 until 6 April 2018 was applied to the reimbursed amount of EUR 8,586,- amounting to EUR 312,-.

The Company believes that the Company's conduct in connection with the Complainant's complaint cannot be critized."

Klagerens repræsentant har i brev af 13/6 2018 til nævnet bl.a. anført:

"I can confirm what was written in Bupa response and add the email I sent them on 30 May 2017 that explain Doctor estimate before and after the operation that means my client was Transparent in his case vs BUPA.
On the other hand, I checked with another important TPA in …: '…' in order to obtain an estimate but I was unable to obtain one in written from them as they protect each Other and also they need to have all details and operation material used but I was informed Verbally that the cost could be between USD 24,000 & 30,000 as they know fees of this Doctor Are always high."

Af forsikringsbetingelserne fremgår bl.a.:

"Art. 6
What is covered by the insurance?
6.1: The insurance shall cover the medical expenses incurred by the insured in accordance with the cover chosen and the applicable List of Reimbursements. The benefits for which expenses are covered and the reimbursement rates are stated in the List of Reimbursements.

6.2: Reimbursement shall be paid following the Company's approval of the expenses as being covered by the insurance after the receipted and itemised bills, provided with the policy number, have been received by the Company. (cf also 'Quick Reference Guide').

6.6: Reimbursements shall be limited to the usual, customary and reasonable charges in the area or country in which the treatment is provided."

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Nævnet udtaler:

Det fremgår af sagen, at klageren blev opereret for brok den 12/5 2017 og var indlagt på hospitalet fra den 12/5 til den 13/5 2017. Klageren er utilfreds med, at selskabet før fradrag af selvrisiko har opgjort erstatningen til 8.586 euro, da han har betalt 38.000 euro for operationen.

Selskabet har over for nævnet anført, at klageren ikke oplyste selskabet om operationen forud for dens gennemførelse, men først den 29/5 2017. Selskabet har under henvisning til forsikringsbetingelsernes pkt. 6.6 derfor opgjort erstatningen med udgangspunkt i operationens CPT koder og oplysninger om de sædvanlige hospitalspriser i landet, hvor klageren blev opereret. Selskabet har på den baggrund før fradrag for selvrisiko opgjort erstatningen for opholdet på hospitalet til 2.084 euro og operationen mm. til 6.502 Euro.

Klageren har anført, at han på grund af forskellige forudbestående sygdomme har betalt forhøjet præmie, hvorfor selskabet forudsætningsvist bør betale forhøjede behandlingsudgifter som følge af hans forudbestående lidelser. Endvidere har han anført, at operationen, som han gennemgik, var meget kompliceret og varede 6 timer og ville have varet længere, hvis en mindre erfaren kirurg havde udført den, hvorfor selskabet er uberettiget til at yde erstatning i med udgangspunkt i, hvad de sædvanlige operationspriser er.

Nævnet bemærker, at klageren ved ikke forud at orientere selskabet om operationen og få selskabets godkendelse har stillet sig i en bevismæssig vanskelig position.

Efter en gennemgang af sagen og efter en samlet vurdering finder nævnet ikke at kunne kritisere størrelsen af den erstatning, som selskabet har udbetalt. Nævnet har blandt andet lagt vægt på selskabets oplysninger om, hvad tilsvarende operationer sædvanligvis koster i det pågældende land, som operationen blev udført i, at det normalt er operationens art og ikke dens varighed, der er afgør prisen, og at forsikringsdækningen, jf. forsikringsbetingelsernes pkt 6.6., er begrænset til "the usual, customary and reasonable charges in the area or country in which the treatment is provided".

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Nævnet har truffet sin afgørelse på skriftligt grundlag. Det kan derfor ikke udelukkes, at en bevisførelse for en domstol kan føre til andet resultat. En sådan sag må i givet fald anlægges af klageren mod selskabet.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen