Ankenævnet *for* Forsikring

Den 21. august 2019 blev i sag nr. 93410:

xxxxxxxxxxxxxxxxxxxxx
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mod

Bupa Denmark, filial af Bupa Insurance Limited
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har en rejseforsikring. I klageskema af 6/2 2019 har klageren bl.a. anført:

> "In the period 04 July-6 August I went on a long-awaited trip from [country1] to [country2] with a stay there for 1 month and a return journey to [country1].
>
> Since it was a serious challenge to me, both – in terms of organization and documentation, I decided to get insured by a company that offers both - medical insurance and insurance covering unforeseen circumstances and expenses on the trip itself.
>
> After researching a number of companies on the European market as well as in [country1], I eventually opted for the company World Nomads. I liked the fact that you can get medical insurance, as well as insurance on the trip itself. Apart from that, the company offers insurance of several personal belongings against damage or theft, which further motivated me to contract an insurance policy witht hem.
>
> Prior to making the insurance, I read carefully the general terms and conditions of the insurance company.
>
> I personally had my backpack and mobile phone insured, which were included in my insurance policy.
>
> As the trip was long, dynamic journey, with a variety of traveling trips and destinations, I signed with the company an extended package of EUR 140, which would give me extra security during the trip.
>
> In [country2], after approximately a two-week stay with my close friend in [city1] I booked online a local tour operator [company] operating in [country2]. The booking included my trip from [city1]

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- [city2] (by plane) - [location1] - [location2] - [city2] - [city3] (by plane) and a return journey to [city1] by train for the period 19.07.2018 - 31.07.2018.

For this trip I ordered and paid online two travel tickets from [city1] to [city2] on 19.07.2018 and from [city2] to [city3] on 24.07.2018.

I also paid for the return trip from [city3] to [city1] by train on 27-31 July of that year.

In addition, I paid hotels in [city2] and [city3].

The total amount of costs for this excitement exceeded [currency] 2,000.

Two days after the payment of all of the above, I received mail that this trip was cancelled by the tour operator without any notice, provided that it existed as available on their site.

Suddenly, I was in a rather complicated situation because I could not find a substitute trip within such a short time, within 2-3 days and at the same time, I had to re-check all airline tickets, train tickets and hotels.

I had booked a flight from [city1] to [city4] on 03.08.2018.

From my company they said they were waiting for me to tell them if I wanted to rebuild my trip for other dates or if I would like them to refund the money of the already paid trip.

Since I had a scheduled flight to [continent] which I could not re-enact, I went to cancellation and quick return of the money from the tour operator to my account.

This forced an urgent search for another excursion, possibly re-crediting all other paid tickets and hotels.

As a result of intensive conversations with the tour operator, they returned the sum for the excursion itself, telling me they could not compensate me for any additional costs.

They also advised me to refer to the insurance company if I had a travel insurance abroad.

After much searching, I managed to book another trip with another tour operator with a starting date of 22.07.2018.

The only tickets I managed to keep on the initial dates were the Airline Ticket from [city1] to [city2] and the Train ticket from [city3] to [city1].

Everything else had to be cancelled or re-enacted on other dates and at my expense.
1. A [city2] - [city1] flight ticket worth [currency] 153 due to a change in all travel dates.
2. Cancellation and new dates and costs for a hotel in [city2] worth [currency] 130.
3. Cancellation and new dates and trips to a hotel in [city3] worth [currency] 133.34
4. Additional Expenses - Expenses for Communication with Tour Operators and Airline Companies, Transport Tickets, fees and more.
(On item 4, unfortunately, I cannot provide detailed information except for a statement on

my bank account.

(I want to repeat again - for me this situation was extremely unpleasant and unexpected.)

Here I have not included any additional costs directly related to the cancellation of the trip because of the impossibility to collect more documents certifying the costs incurred.

(Cost of food, fare and others)
…
I released my policy for reviewing to World Nomads on August 2, 2018.

After approximately two months of waiting, I received the first reply that my request was rejected because the trip had been fulfilled and the tour operator had refunded the money.

As I do not claim that the operator has not refunded my money, but for all the other costs I incurred directly related to the cancellation, I appealed this decision by explicitly asking why they offer two package options – standard and extended, when neither of them covers expenses due to unforeseen situations during travel.

On November 5, 2018, I received a reply from them that they definitively refused any compensation as their general terms and conditions include travel payment for the following reasons only:
1. Hospitalization
2. Death
3. Payment due to failure to make the trip on the side of the initial country of the trip.
…
However, I have paid travel insurance, an extended package.

What does an extended package mean and what does it cover. ???

Why neither of the two packages offered by the company does not cover costs for unforeseen situations when traveling abroad. ???

On these issues, I did not receive an adequate response from the insurer.

The General terms cannot be written so as to give the insurer the right not to pay because the general terms do not allow it.

All conditions must give equal rights and be non-discriminatory towards the victims.

The insurer has written their general terms and conditions so as not to pay any damages.

I believe that the general conditions directly discriminate me by refusing to pay for the costs

I have incurred for which I have the relevant documents.

What is this Travel Insurance which does not cover any unforeseen travel expenses?

I consider this a form of fraud. I paid a large sum of money - EUR 140 - for insurance that I cannot benefit from.

If World Nomads does not want to cover these damages, I would like to be refunded with the money I paid for this insurance policy.
…
Hvad vil du konkret opnå hos selskabet?
1.) Compensation for costs incurred by me as follows:
Cause of a sudden cancellation of a trip paid online.
1.1 A [city2]-[city3] flight ticket worth [currency] 153 due to a change in all travel dates.
1.2 Cancellation and new dates and costs for a hotel in [city2] worth [currency] 130.
1.3 Cancellation and new dates and trips to a hotel in [city3] worth [currency] 133.34
1.4 Additional Expenses - Expenses for Communication with Tour Operators and Airline Companies,Transport Tickets, fees and more. (Costs Point 4 see my bank statement) [currency] 150-200
Total [currency]: 616

2.) If World Nomads does not want to cover these damages, I would like to be refunded with the money. (130 EUR -paid upon the conclusion of the insurance)"

Selskabet har 3/3 2019 bl.a. redegjort for sagsforløbet og afgørelsen således:

"**Klagers krav**
Klager ønsker udbetaling af [valuta] 2.000 svarende til det beløb han mistede i forbindelse med, at en rejsearrangør, [virksomhed], aflyste et rejsearrangement.

Såfremt Selskabet ikke imødekommer Klagers hovedkrav, stiller Klager subsidiært krav om tilbagebetaling af præmiebeløbet.

Selskabets svar
Klager var i perioden 4. juli – 6 august 2018, på rejse i [land2]. Under sit ophold i [land2], købte han, via turarrangøren [virksomhed], et rejsearrangement for perioden 19.7. – 31.7.2018. Uden begrundelse meddelte [virksomhed] 2 dage efter købet, at rejsearrangementet var aflyst. Efter en angiveligt længere dialog mellem Klager og [virksomhed] indvilligede [virksomhed] i, at refundere Klager et beløb svarende til, det beløb han havde indbetalt til dem. [Virksomhed] afviste samtidig Klagers krav om kompensation for de øvrige ikke refunderbare udgifter. Hovedsageligt var disse for køb/ændring af hotel og transport, som han supplerende havde tilkøbt andre steder end hos [virksomhed], men specifikt perioden 19.7. – 31.7.2018.

Den 2.8.2018 modtog Selskabet Klagers krav om erstatning for [valuta] 2.000, svarende til disse ikke refunderbare udgifter.

Efter en gennemgang af de indsendte oplysninger meddelte Selskabet den 11.9.2018 Klager afslag på dækning. Som begrundelse for afvisningen fremhævede Selskabet, at kravet udsprang af turarrangørens aflysning af rejsearrangement, hvilket ikke indgår som én af de positivt nævnt dækningsårsager i forsikringsbetingelserne.

I en mail af den 26.9. 2019 meddelte Klager, at han var uenig i Selskabets afgørelse. I forlængelse heraf meddelte Selskabet den 28.9.2018 Klager, at sagen var lagt til revurdering hos den klageansvarlige.

Til understøttelse af Selskabets afslag på dækning gengives nedenfor 2 sektioner i forsikringsbetingelserne, Section 13, omhandlende afbestilling inden afrejse fra hjemlandet samt Section 14 – rejseafbrydelse under den planlagte udlandsrejse (Appendix 1 – Insurance Conditions World Nomads 2018)
…
Efter at have sammenholdt sagens akter og de gældende forsikringsbetingelser meddelte Selskabet i brev af den 5.11.2018, Appendix 2 – Final Complaints Response- 5.11.2018, at en revurdering af erstatningsspørgsmålet ikke kunne føre til et ændret resultat, hvorfor Selskabet fastholdt afslag på dækning.

Konklusion
Det følger af forsikringsaftalen, at ethvert erstatningskrav skal vurderes i forhold de gældende forsikringsbetingelser.

Specifikt forudsættes, at et erstatningskrav falder inden for forsikringsbetingelsernes positivt nævnte forudsætninger for dækning samtidig med, at kravet ligeså heller ikke står i modsætningsforhold til disses undtagelsesbestemmelser.

Da Klagers krav om udbetaling af [valuta] 2.000 udspringer af omstændigheder, der ligger uden for de i Section 13 samt 14 positivt nævnte forudsætninger for dækninger, fastholder Selskabet dets afslag på dækning.

For så vidt angår Klagers subsidiære krav, om tilbagebetaling af forsikringspræmie, finder Selskabet finder ikke en legitim begrundelse for et sådant krav, hvorfor Selskabet heller ikke kan imødekomme denne del af Klagers samlede krav."

Nævnet har derudover modtaget klagerens bemærkninger af 31/3 2019 og 9/6 2019 samt selskabets bemærkninger af 12/4 2019.

Af forsikringsbetingelserne fremgår bl.a.:

"SECTION 13 PRE-TRIP CANCELLATION
13.1: We will pay for your unused, no-refundable, pre-paid travel and accommodation expenses, tuition/course fees, tours, (or, if not pre-paid, any such expenses, which you are unable to pay), changes or fees and/or cancellation fees if you have to cancel or postpone your trip before you leave home for the following reasons:
a) You, your fellow traveler or a close relative us unexpectedly hospitalized or dies as a result of acute serious illness or acute serious injury; or
b) You or a co-insured on the same policy are declared medically unfit to travel.

Furthermore, it is a condition for cover that the death, acute serious illness (including any symptoms) or acute serious injury was unexpected and occurs after you booked and/or paid for the trip

and after you purchased the insurance or there is no possibility of a refund according to the conditions of the travel agency, airline or transportation company for the above mentioned fees or expenses.
…
13.2: The right to compensation ends on the commencement date noted on the Certificate of Insurance and/or when you leave your country of permanent residence by passing border control or embarking on an aircraft, a ship or a train.
…
SECTION 14 TRIP INTERRUPTION
14.1: We will pay for your unused, non-refundable, pre-paid travel and accommodation expenses, tuition/course fees, tours, (or, if not pre-paid, any such expenses which you are liable to pay) and change to itinerary fees if your trip is interrupted or you have to terminate your stay abroad prematurely due to:
a. you, your fellow traveller or a close relative is unexpectedly hospitalised or dies as a result of an acute serious illness or acute serious injury; or
b. your airline, accommodation provider, car hire company, school or other travel service provider`s insolvency."

Nævnet udtaler:

Klageren rejste den 4/7 2018 på ferie med planlagt hjemrejse den 6/8 2018. Under rejsen bestilte klageren en rundrejse til en anden del af landet hos en lokal arrangør. Rundrejsen skulle finde sted fra 19/7 2018 til 31/7 2018. Udover betaling til arrangøren bestilte klageren selv en række flybilletter og hotelovernatninger. Arrangøren aflyste efterfølgende turen, og klageren fik sin betaling til arrangøren tilbagebetalt. Klageren ønsker, at selskabet dækker de øvrige udgifter til hotel m.v., som klageren ikke kunne benytte pga. arrangørens aflysning. Såfremt han ikke kan få disse udgifter dækket, ønsker han er få tilbagebetalt forsikringspræmien.

Af forsikringsbetingelsernes punkt 13.1. fremgår det, at selskabet "will pay for your unused, non-refundable, pre-paid travel and accommodation expenses, tuition/course fees, tours, (or, if not pre-paid, any such expenses, which you are unable to pay), changes or fees and/or cancellation fees if you have to cancel or postpone your trip before you leave home for the following reasons: a) You, your fellow traveler or a close relative us unexpectedly hospitalized or dies as a result of acute serious illness or acute serious injury; or b) You or a co-insured on the same policy are declared medically unfit to travel". Det fremgår videre af punkt 13.2., at "The right to compensation ends … when you leave your country of permanent residence".

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Af forsikringsbetingelsernes punkt 14.1. fremgår det, at selskabet dækker "your unused, non-refundable, pre-paid travel and accommodation expenses, tuition/course fees, tours, (or, if not pre-paid, any such expenses which you are liable to pay) and change to itinerary fees if your trip is interrupted or you have to terminate your stay abroad prematurely due to: a. you, your fellow traveller or a close relative is unexpectedly hospitalised or dies as a result of an acute serious illness or acute serious injury; or b. your airline, accommodation provider, car hire company, school or other travel service provider`s insolvency".

Efter en gennemgang af sagen finder nævnet ikke grundlag for at kritisere selskabets afgørelse, da forsikringsbetingelserne ikke indeholder bestemmelser, som kan medføre dækning i den pågældende situation. Nævnet finder heller ikke, at der er omstændigheder i sagen, som berettiger klageren til at få forsikringspræmien retur.

Nævnet har blandt andet lagt vægt på, at reglerne om "pre-trip cancellation" alene finder anvendelse ved aflysninger, som skyldes alvorlig sygdom, hospitalsindlæggelse eller dødsfald, og som sker inden, at forsikringstageren forlader sit bopælsland.

Nævnet har også lagt vægt på, at reglerne om "trip interruption" kun finder anvendelse, hvis forsikringstageren må afbryde sit ophold i udlandet som følge af alvorlig sygdom, hospitalsindlæggelse eller dødsfald eller konkurs hos flyselskab, biludlejning eller lignende.

Det af klageren anførte kan ikke føre til andet resultat.

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Som følge heraf

b e s t e m m e s :

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Klageren får ikke medhold.

Svend Bjerg Hansen

Udskriftens rigtighed bekræftes

Carsten Sennels