Ankenævnet *for* Forsikring

Den 7. august 2019 blev i sag nr. 93559:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

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

afsagt

k e n d e l s e :

_____

Forsikringstageren har en rejseforsikring. I klageskema af 18/3 2019 har klageren bl.a. anført:

> "**1. Statement of claim, a brief outline of the case.**
> A Claim was made for the theft of my [family member's] handbag in [a European country] which contained a number of items. The theft was reported to the police and all receipts were provided to the insurance company to provide proof of ownership -- these were all documented and sent as part of the claim. The theft occurred in a shop, where my [family member] for a very short period of time placed the bag down on a table next to her tried on a hat - went to purchase the hat and the bag was stolen – this entire process happened within a maximum of 90 to 120 seconds by a professional thief. The claim was declined under the terms of being not effectively supervised. Please note I was standing next to my [family member] the whole time and did not notice either. We were not careless and were aware of our surroundings - this was a professional thief.
>
> a. leaving your baggage unsupervised in a public place. (IT WAS NOT UNSUPERVISED)
> b. leaving your baggage with a person you have not previously met, (WE DID NOT LEAVE THE BAG WITH ANYONE)
> c. leaving your baggage in any position where it can be taken without your knowledge, or (ON A TABLE IN FRONT OF MY [family member], WITHIN 10 CM (A HAND WIDTH) IS CLEARLY NOT IN A POSITION WHERE IT CAN BE EASILY TAKEN WITHOUT KNOWLEDGE
> d. leaving your baggage such a distance from you that you are unable to prevent it being taken. (ON A TABLE IN FRONT OF MY [family member], WITHIN 10 CM (A HAND WIDTH) IS CLEARLY A PREVENTABLE DISTANCE
>
> The claim is being deemed simple theft which given the proximity, timing I find it impossible to understand and question why this is the case. I have followed all the correct procedures, providing proof of travel, police reports, receipts, etc. I can send to you if this is required.

2. What specifically do you want to achieve from the insurance company?
I want to receive a successful claim on my policy for the stolen items and payment in full less any excess due."

Selskabet har den 12/4 2019 bl.a. redegjort for sagsforløbet og afgørelsen således:

"**Klagers krav**
Klager stiller krav om erstatning for værdien af en taske med indhold, tilhørende hans [familiemedlem].
Kravet skal vurderes ud fra de gældende forsikringsbetingelser delt på portalen den 1.4.2019 under filnavn 'WorldNomads_Eur_2017_Policy'.

Det er Selskabet vurdering, at tasken er mistet under omstændigheder, der falder inden for definitionen af simpelt tyveri. Som det fremgår af sagsfremstilling nedenfor, indgår simpelt tyveri ikke som en dækningsberettiget hændelse. I tillæg hertil er simpelt tyveri specifikt nævnt i forsikringens undtagelsesbestemmelser.

Sagsfremstilling
Den 15.6.2018 modtager Selskabet en skadeanmeldelse, en politirapport samt understøttende kvitteringer for de ejendele Klager søger erstatning for. Appendix 1 – (Claim form, police report).

Af skadeanmeldelsen fremgår følgende beskrivelse af hændelsesforløbet:
My [family member] *and I were together walking along the promenade of the address provided. We stopped.*
1. I was standing on my [family members] *left and she picked up a hat to try on, and put down her handbag on her right.*
2. I was holding a mirror for her to look at it
3. She liked the hat, told the market store holder we would buy it.
4. She went to get her bag and it had gone
5. The whole process was no more than 2 minutes in my estimation.

Jf. Appendix 3 (English version of [udenlandsk] Police Report) indeholder ikke en beskrivelse af hændelsesforløbet, men referer alene til generelle data omkring dato/tid/sted samt hvilke personlige ejendele den forurettede ønsker anmeldt.

For at give Klager mulighed for at tilføje evt. relevante yderligere detaljer om hændelsesforløbet, beder Selskabet Klager om at uddybe omstændighederne omkring, hvordan tasken er mistet. Klager uddyber herefter hændelsesforløbet som følger:
1. My [family member] and I were visiting the [part of country] and had gone to the town called …
2. We were walking along the promenade alongside the beach and stopped at shop for my [family member] to look at the hats
3. The hats were laid out in a table and (name of co-insured [family member]) put her handbag down on the table in front of her to look at the hats
4. (name of co-insured [family member]) tried two or three of the hats and had to look to her left to see in mirror.
5. (name of co-insured [family member]) decided she wanted to purchase one of them. At which point she went to get her handbag to go and pay and it had been taken

6. (name of co-insured [family member]) hadn't moved during this process only to look to the left to check a
mirror, so the handbag was next to her at all times and was not left unattended.

Selskabet vurderer herefter erstatningskravet, specifikt i forhold til følgende relevante bestemmelser fra forsikringsbetingelserne - filnavn 'WorldNomads_Eur_2017_Policy'.
…
Selskabet finder det uomtvisteligt, at hverken Klager eller [familiemedlem] bemærker tasken forsvinde i de ca. 2 minutter der går fra [familiemedlem] stiller tasken fra sig på et bord, mens begges opmærksomhed er rettet mod prøvning af forskellige hatte. På den baggrund meddeler Selskabet den 24.7.2018, at hændelsen betragtes som simpelt tyveri og dermed ligger uden for forsikringens dækning, jf. Section 21.3 m.

Idet Klager er uenig i Selskabet vurdering, aftales det den 26.7.2018, at sagen videregives til en reevaluering hos Selskabets klageafdeling. Grundet en teknisk fejl, bliver klageafdelingen beklageligvis først opmærksom på sagen, da Klager rykker for svar den 17.10.2018.

I forlængelse af klagebehandlerens revurdering meddeler Selskabet i en mail af 23.10.2018, at sagen er behandlet i henhold til de gældende forsikringsbetingelser og derfor ikke fører til en ændring i Selskabet afgørelse af erstatningsspørgsmålet. Fordi Klager ikke er tilfreds med udkommet af revurderingen, er der i perioden 23.10 – 29.10.2018 en videre mail dialog mellem Klager og selskabets klageafdeling Appendix 2 (E-mail dialogue 4.7. – 29.10.2018).

Konklusion
Det følger af forsikringsaftalen, at ethvert erstatningskrav skal vurderes i forhold de gældende forsikringsbetingelser. Herunder forudsættes, at erstatningskravet falder inden for forsikringsbetingelsernes positivt nævnte forudsætninger for dækning samtidig med, at kravet ikke står i modsætning til betingelsernes undtagelsesbestemmelser.

Såvel af skadesanmeldelsen som i klagers senere detaljerede gengivelse af hændelsesforløbet fremgår tydeligt, at ingen har set [familiemedlems] taske blive taget i gerningsøjeblikket. ('it had gone' respektivt 'she went to get her handbag to go and pay at it had been taken'). Senest gentages det i Complaints form; Statement of claim, a brief outline of the case til Ankenævnet; Please note I was standing next to my [family member] the whole time and did not notice either.

Selskabet vurderer forsikringsbegivenheden ud fra de oplysninger klageren har afgivet om hændelsesforløbet, og lægger da til grund, at der var tale om 'simpelt tyveri', som eksplicit er undtaget fra dækning, jf. forsikringsbetingelsernes art. 21.3.m.

I forlængelse af ovenstående gennemgang vurderer Selskabet, at Klager ikke har sandsynliggjort at der er tale om en dækningsberettiget forsikringsbegivenhed, og fastholder derfor afvisning af erstatningskravet."

Klageren har den 15/5 2019 bl.a. anført:

"The basis of my dispute on the claim is that I fundamentally do not agree that this is a case of Simple theft and am disputing the terms of 'Unsupervised' as per my e-mail. Please let me know if I can provide you any further information to support the decision in

this case."

Af klagerens anmeldelse til selskabet af 15/6 2018 fremgår bl.a.:

"**Claim Type**
Stolen luggage or personal belongings
…
What Happened
Both my [family member] and I were walking along the street and stopped at a store selling hats. My [family member] picked up a hat to try it on, put her bag right beside her on the table as she tried the hat on. Decided that she wished to purchase it; went to pay and her bag had been taken. The whole period from putting the bag down to going to pay was no more than 2 minutes or so.
…
At the time the item(s) were stolen, where were the item(s) in relation to the person looking after the item(s)?
Next to the person looking after the item(s) (e.g. In handbag on the seat)

Please describe in detail what happened. In particular, if your friend or family member was with other people at the time…
My [family member] and I were together walking along the promenade of the address provided. We stopped. 1. I was standing on my [family member] left and she picked up a hat to try on, and put down her handbag on her right. 2. I was holding a mirror for her to look at it 3. She liked the hat, told the market store holder we would buy it. 4. She went to get her bag and it had gone 5. The whole process was no more than 2 minutes in my estimation.

Did you report the theft?
Yes

Who did you report the theft to?
The police"

Af forsikringsbetingelserne fremgår bl.a.:

"**SECTION 21 BAGGAGE**
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, jewellery, laptops, cameras, mobile phones or other items you bring or buy on your trip), if your belongings are:
…
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 when being committed;
d. stolen from a locked boot or locked and concealed baggage compartment separate from the passenger compartment
of a locked motorised vehicle or boat. There must be visible signs of forced entry into the boat or vehicle
…

21.3 We will not cover or pay for:
…
e. stolen items, where they are not effectively supervised or where you do not take reasonable care for the safety, security or condition of your belongings;
…
m. simple theft, where you do not observe the theft occurring;
…
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,
b. leaving it in any position where it can be taken without your knowledge,
c. leaving it such a distance from you that you are unable to prevent it being taken."

Nævnet udtaler:

Klageren har anmeldt, at et familiemedlem fik stjålet sin taske under en ferie.

Selskabet har afvist at yde dækning med henvisning til, at forsikringen ikke dækker simpelt tyveri.

Klageren har i anmeldelsen af 15/6 2018 beskrevet hændelsesforløbet således: "Both my [family member] and I were walking along the street and stopped at a store selling hats. My [family member] picked up a hat to try it on, put her bag right beside her on the table as she tried the hat on. Decided that she wished to purehase it; went to pay and her bag had been taken. The whole period from putting the bag down to going to pay was no more than 2 minutes or so".

Af forsikringsbetingelsernes punkt 21.3. litra m fremgår det, at der ikke er dækning for "simple theft, where you do not observe the theft occurring".

Efter en gennemgang af sagen finder nævnet ikke grundlag for at kritisere, at selskabet har afvist at yde dækning for det anmeldte tyveri under henvisning til, at der er tale om et simpelt tyveri.

Nævnet har blandt andet lagt vægt på, at det ikke er godtgjort, at tyveriet af tasken blev bemærket af klageren eller andre i gerningsøjeblikket.

Det som klageren har anført, herunder at tasken hele tiden var inden for afstand af en håndslængde fra et familiemedlem, kan ikke føre til andet resultat.

Som følge heraf

b e s t e m m e s :

_____

Klageren får ikke medhold.

Jens Kruse Mikkelsen
formand