Ankenævnet *for* Forsikring

Den 7. august 2019 blev i sag nr. 93560:

xxxxxxxxxxxxxxxxxxxxx
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xxxxxxxxxxxxxxx

mod

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

afsagt

k e n d e l s e :

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Forsikringstageren har en rejseforsikring. I klageskema af 14/3 2019 har klageren bl.a. anført:

> "**1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.**
> In short, On February 9, 2018 my luggage was stolen in [country]. On February 22 I completed my participation on the insurer's website. After this the insurer kept asking aditional documents over almost an year that includes sending it not only by e-mail but also by postmail. Having submitted all the requested documentation by the insurer during this time (police report, invoices, proof of stay and travel, cancellation of credit cards, etc ..) In a clear attempt by the insurer not to assume responsibility, by always keep requesting more documents, that I have always sent, without finding any further Justification, after almost 6 months I got my first answer, the insurer alleges that through an phone call to the [foreign] police could not confirm my claim so will not pay my lost belongings. I questioned the legitimacy of this procedure, state as a reason a phone call?
>
> After another 3 more months and more documents asked I received another e-mail indicating now, that from an e-mail of an unknown yahoo account (that the insurer says its from [foreign] police) they could not confirm my claim so will not pay my lost belongings.
>
> In my opinion the insurer is Violating the conditions of the insurance policy, since I do not consider valid answers saying to, me, that by phone call or that have an e-mail from an unknown yahoo account that doesn't confirm my claim, as well as there was no respect for the deadlines of response, being that only obtained the final answer almost 1 year later, and no respect for my personal data since that they send my personal info to and unknown e-mail.
>
> **2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?**
> I intend for an insurance company to pay my lost property as per my claim."

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Klageren har endvidere ved mail af 14/3 2019 uddybet sin klage:

> "On February 9, 2018 my luggage was stolen in the [country]. On February 22 I completed my participation on the insurer's website by submitting all requested documentation. After 5 months waiting for the response I received an e-mail with the request to send by post mail the originals of all the documentation that I had submitted on the website (police report, invoices, etc ...) that I did. After almost 6 months of waiting i received another e-mail saying that they had not been able to confirm my police report with the [foreign] police, and that they had done so through a phone call, then, with that justification they would not pay the lost of my belongings.
>
> Obviously I was amazed by such a response, how can a company give such a response (by phone !!), after I was asked for all legal documentation, I was even asked to send the originals by mail. Moreover, when I went to the [foreign] police and explained that I needed the report because the insurer was demanding it, I had to pay for the translation of it into English, and they told me that they could only deliver the next day. I explained that my return flight was also next day, and since it was just a matter of translating (that participation was made and paid) if they could please send it to the email or postmail, or give it to a third person, so i dont have to risk losing my flight. I was informed that they could not do so, and that the report could only be delivered to me personally. After I received the response from the insurer (who could not confirm my participation via telephone) I tried to speak to the [foreign] police, to try to undersant if there was any problem with me report and if the insurer have speak to them, the response I had received was the same as in [country], they will not give me or other person infos by phone.
>
> After complaining to the insurer that i was amazed with the answer, for the reasons listed, the insurer's on August 3, 2018 response was, for the 6-month delay to get a decision it was the time difference between Europe and [country]! and on the 10th of August I get a new email saying that they are still trying to contact the [foreign] police (but then they had not done so before?!!), and asking for more documentation from me (Credit cards canceled after your wallet was stolen, Plane tickets / Who you spoke to in the police station, when you contact them / Name of the hotel, booking and bill) which I sent.
>
> After i send all the documentation, on September 21, 2018 I received an email from the insurer informing me that they had received an email from a yahoo account !!! that did not confirm my report. I asked how to confirm that this is an official email? and where were they sending information about me? now, in addition to violating my rights as a consumer, they were also violating my data (EU Data Protection Rules)? Obviously after having been told in the [country] that only at me and in person, they would give me the report, and even after I telephoned to clarify if there was any issue with the report/ translation the answer was kept the same, so I do not believe in the response that I was given by the insurer. As well as a brief search on the net, you cant find nowhere such an e-mail, and the official e-mails are .gov.[…], now I am also concerned about where the insurer has been sending information about me.
>
> Asked about that I got the response that I gave authorization 'to BUPA Global Travel processing my data. '.. and didn’t have send any personal info about me? but the problem is an yahoo account that no one knows who own it it´s not BUPA (or is?) that I gave the permission to processing my data (and you have to accept that to continue the submission of the claim on line,

otherwise you cant submit the claim!) and if they didn't send my personal info how can someone confirm it?."

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

"**Klagers krav**
Klager stiller krav om erstatning for mistede ejendele, til en sammenlagt værdi af Euro 4.047.88. Appendix1 - (Claim Form, 22.2.2018).

Den anmeldte hændelse relaterer sig til forsikringsbetingelserne Section 21 Baggage and personal effects.- delt på portalen den 19.3.2019, under filnavn 'Product Guide1'

Selskabets svar
Den 22.2.2018 indsender Klager sin skadeanmeldelse Appendix1 – (Claim Form, 22.2.2018). I forlængelse heraf sender Selskabet den 12.4.2018 en mail til Klager og beder ham indsende relevante og understøttende bilag til kravet. Med reference til forsikringsbetingelsernes, Section 21, er det således et krav for erstatning, at den forsikrede underbygger sit krav med en politirapport:
…
Den 15.6.2018 modtager Selskabet en politirapport fra [land] delt på Portalen den 19.3.2019, under filnavn 'Police invoice' samt kvitteringer for personlige ejendele, der søges erstatning for.

For så vidt angår Selskabets henvendelse til de [udenlandske] politimyndigheder, kontakter vi dem telefonisk den 5.7.2018 og refererer til politirapportens 'Entry no' filnavn 'police invoice'. I samtalen bliver Selskabet informeret om, at anmeldelse, identisk med dette 'Entry no', ikke findes. På grund af den manglende bekræftelse på politirapportens ægthed, og dermed manglende dokumentation for kravet, meddeler Selskabet samme dag klager om afslag på dækning.

Af Appendix2 – (Cronologic resumé of the case) - fremgår bl.a. e-mail dialog mellem Klager og Selskabet, henover perioden 5.7. – 20.8.2018.

I en mail af den 2.8.2018 tilkendegiver Klager utilfredshed med sagsforløbet. Udledt heraf svarer Selskabet i en mail af den 3.8.2018, at Selskabet arbejder ud fra særlige procedurer, bl.a. verificering af fremlagt dokumentation.

Klager svarer i en mail af den 5.8.2018, at han ikke kan vente længere på en afgørelse og derfor vil være tilfreds hvis Selskabet udbetaler erstatning for et mistet kamera samt en mobiltelefon. Selskabet gør i den forbindelse nævnet opmærksom på, at ud af Klagers oprindelige krav på Euro 4.047.88, udgør værdien af kamera og mobiltelefon Euro 1.897.

Den 31.8.2018 sender Selskabet en mail til de [udenlandske] politimyndigheder, vedhæftet den anonymiserede politirapport Appendix3 - (Request of authenticy of police report, 31.8.2018). I mailen beder Selskabet de [udenlandske] myndigheder om en skriftlig afklaring af rapportens ægthed.

Efter at have rykket, modtager Selskabet den 18.9.2018 politiets svar, der i detaljer begrunder, hvorfor den af Klager indsendte politirapport ikke kan bekræftet som ægte Appendix3 - (Request of authenticy of police report, 31.8.2018). I forlængelse heraf sender Selskabet den 21.9.2018 en mail til Klager og fastholder afvisning af erstatningskravet.

Den 4.10.2018 modtager Selskabet en mail fra Klager og på grund af sagens udvikling meddeler Selskabet i en mail af 27.11.2018 Klager, at sagen er videregivet til Selskabets Klageafdeling, hvorfra han vil høre nærmere.

Efter en revurdering af sagsforløbet meddeler Selskabet i en mail til Klager, dateret 3.1.2019 delt på portalen den 19.3.2019, under filnavn 'Complaint-Reply', at Selskabet fastholder afvisning af erstatningskravet. Fordi Selskabet kan fremlægge en anonymiseret politirapport Appendix3 - (Request of authenticy of police report, 31.8.2018). tilbageviser Selskabet samtidig Klagers påstand om, at en overtrædelse af gældende databeskyttelsesregler.

Specifikt fremhæver Selskabet følgende:
• At Klager på skadeanmeldelsen bekræfter, at hans oplysninger i samme er både fyldestgørende og sande, hvilket sidenhen står i direkte kontrast de [udenlandske] politimyndigheders udsagn.
• At Klager i skadeanmeldelsen bekræfter at have læst Selskabets databeskyttelsesregler og samtykke i Bupa Global Travels bearbejdning af de data, som Klager har oplyst til Selskabet.
• At Selskabet ved kontakt til de [udenlandske] politimyndigheder har overholdt gældende databeskyttelses regler.

Konklusion
Ethvert erstatningskrav skal vurderes i forhold de gældende forsikringsbetingelser, og forsikredes dokumentation af såvel den anmeldte hændelse som kravets størrelse.

Med baggrund i ovenstående redegørelse konkluderer Selskabet, at Klager ikke med tilstrækkelig sikkerhed har dokumenteret en dækningsberettiget begivenhed og ligeså heller ikke har sandsynliggjort rigtigheden af sit krav.

For så vidt angår Selskabets behandling af personoplysninger pointeres, at vi ved kontakt til de [udenlandske] politimyndigheder alene har refereret til politirapportens 'Entry no.' og derved ikke har videregivet oplysninger til 3. part, der identificerer Klager som person.

For så vidt angår sagsbehandlingstiden har Selskabet forståelse for, at man som forsikrede ønsker en hurtig afklaring af sit erstatningskrav, hvilket almindeligvis forudsætter, at forsikrede snarest muligt bidrager med fyldestgørende dokumentation for sit krav. Selskabet medgiver, at der henover sagsforløbet har været tilfælde, hvor vi ikke har svaret inden for vores almindelige ekspeditionstider, hvilket vi beklager. I tillæg hertil gør vi dog samtidig opmærksom på, at Klager, i løbet af sagsbehandlingstiden selv har medvirket til sagens samlede varighed, bl.a. ved ikke at have bidraget med understøttende dokumentation for kravets rigtighed.

Selskabet fastholder afvisning af erstatningskravet og har ikke ingen yderligere kommentarer til sagen."

Klageren har herefter den 16/5 2019 bl.a. anført:

"First, I would like to highlight the position of the company by pointing out when referring to the amount requested as compensation in my email of the day 5.08.2018.

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The company refers to my e-mail dated 2.08.2018, but does not refer to its content, which, as you can see in the attachments, i complain about the company´s answer, for not paying was allegedly making a phone call to the [foreign] police. Since when I contacted the [foreign] police in person and later by telephone, I always got the same response, they do not send or give information by phone or email to anyone. I also complain about the fact of almost half an year have past and the company continues to make me lose time and money (such as requesting the sending of all documentation by registered mail, calling to [country] and responding to emails) and i request 'a final answer' in this e-mail.

The company refers to my email from day 5.08.2018, which curiously the amount also is not correct would be 2150 euros (camera canon + gopro + mobile phone), but in the response sent to ankenaevnet for forsikring does not mention that my e-mail of the day 5.08.2018 was in response to an email from the company on 3.08.2018 where I am told that the procedures and response times are associated with the amount of the complain (as you can see in the attachments).

I would like to remind you that at this time I was in [home country] claiming insurance purchased over the internet from a company abroad, that after half a year of waiting, and after I had delivered all the requested documents (even sent by registered mail) they would not pay based on an alleged phone call. Of course as a consumer I was feeling completely unprotected, I had already paid the insurance and now the company could respond whatever they wanted. I would also like to add that when I submitted the complaint, I did not know the maximum amount covered by the insurance, and I do not know it at the moment.

Second, the company always refers to sending an email to the [foreign] police, but nowhere is it possible to confirm the veracity of this email (I would like to remind you that we are talking about a yahoo account) and that this email only appears after my complaint about the company's response to my complaint is based on an alleged phone call."

Af klagerens anmeldelse af 22/2 2018 fremgår det bl.a.:

"What Happened
I was walking on the street trying to find my place to stay the night near the airport. I stop near a store/bar to ask for directions, with my troley in front of me. A male coming from behind took it away while another was wainting on a bike and both got way.
…
Did you report the theft?
Yes
…
Date and Time Reported:
09 Feb 2018 11:35 PM"

Af mail af 18/9 2018 fra det udenlandske politi fremgår bl.a.:

"After thoroughly checking our records including the personnel assigned in this unit as well as our police blotter entry, we would like to inform you that the signatory on Duty Investigator [person 1] is fictitious, more so, Police Chief Inspector [person 2] is no longer our Chief TPU starting Janu-

> ary 26, 2018. Therefore, that police report provided to you by your client is NULL AND VOID and it was not issued by this office."

Af forsikringsbetingelserne fremgår bl.a.:

> "21.7: Any theft, robbery or fire must be reported to the nearest police authority within 24 hours. If, in exceptional circumstances, it is not possible to notify the relevant local authority, for instance due to imminent departure, we must be notified within 24 hours following the theft, robbery or fire.
> …
> A copy of the police report and/or the reports filed with the carrier, accommodation provider or other service provider must be submitted to us.
>
> We reserve the right at any time to require you to present the original bills/receipts in order to document the value of the property in support of your claim."

Nævnet udtaler:

Klageren har anmeldt, at han under en rejse til udlandet den 9/2 2018 stjålet sin kuffert. Han klager over, at selskabet har afvist at yde dækning. Han har også anført, at selskabet har overtrådt databeskyttelsesreglerne.

Selskabet har afvist at yde dækning under henvisning til, at klageren ikke har dokumenteret, at han har anmeldt forholdet til det lokale politi, hvilket er et krav i forsikringsbetingelserne. Selskabet har anført, at man ikke har kunnet få bekræftet anmeldelsen hos de udenlandske politi, og at politiet endvidere i mail af 18/9 2018 har oplyst, at politirapporten, som klageren har fremlagt, er falsk.

Klageren bestrider, at der er tale om en falsk rapport, og han henviser til, at det forekommer mistænkeligt og utroværdigt, at det udenlandske politis svarmail er sendt fra en Yahoo-mailkonto.

Af e-mail af 18/9 2018 fra de udenlandske politi fremgår at, at de to personer, som har underskrevet politirapporten, er henholdsvis fiktiv og ikke længere ansat i den anførte stilling. Det

anføres på denne baggrund i mailen, at politirapporten er "NULL AND VOID and it was not issued by this office".

Af forsikringsbetingelsernes punkt 21.7 fremgår det, at forsikringstageren i tilfælde af tyveri skal anmelde forhold til det lokale politi inden for 24 timer. Det fremgår videre, at politirapporten efterfølgende skal fremsendes til selskabet.

Efter en gennemgang af sagen finder nævnet ikke grundlag for at kritisere selskabets afgørelse.

Nævnet har lagt vægt på de fremlagte oplysninger og må lægge til grund, at det udenlandske politi har oplyst over for selskabet, at der er tale om en falsk politirapport.

Nævnet har også lagt vægt på, at der ses at være uoverensstemmelser mellem klagerens kvittering for betaling for kopi af politirapporten og selve politirapporten, idet kvitteringen har nr. …4556, mens det på politirapporten er anført: "paid under O.R. # …4702".

Det som klageren har anført – herunder at det virker mistænkeligt, at e-mailen fra det udenlandske politi er sendt fra en Yahoo-konto – kan som sagen foreligger oplyst ikke føre til et andet resultat.

Det falder uden for nævnets kompetence og henhører under Datatilsynet at tage stilling til klagen vedrørende selskabets eventuelle overtrædelse af databeskyttelsesreglerne.

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

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Som følge heraf

b e s t e m m e s :

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Klageren får ikke medhold.

Jens Kruse Mikkelsen

formand