Ankenævnet *for* Forsikring

Den 6. november 2019 blev i sag nr. 94066:

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 rejseforsikring. I klageskema af 14/8 2019 har klageren bl.a. anført:

> "I would like to request a review against the attached decision. The insurance company is giving the reason that the claim has been rejected because I didn't witness the theft. The insurance company says that this is because on occasion individuals don't know whether it is an actual theft or they left an item somewhere and couldn't recall. I would like to add some clarification here, to explain that the items were not left unattended:
>
> 1. The theft happened during a business trip, and this insurance company has a business relationship with my employer
>
> 2. It is correct that I did not witness the theft, but I can tell you for sure that it was a theft during the time when I was having a dinner with a colleague of mine, who is a [titel] (very senior colleague). He was a witness to the entire event – I walked into the restaurant but on the way out the bag was stolen. So, on this basis, I can confirm that this is the case of a stolen bag, not a misplaced bag and there are no uncertainties as to what happened to the bag; it's a theft, no ambiguity in this regard. Do note that the restaurant owners were shocked that this happened because there were only around 6 to 8 people in the restaurant in addition to us … it was relatively empty is the point I am trying to make, not like a jam packed restaurant where something like this could actually be expected. And there is only 1 entry and exit door to the restuarant.
>
> 3. Things get stolen off people, while they are carrying them (e.g., when you have a backpack, and someone steals items from the back poket in a train for example) ... one wouldn't 'witness' this theft either, but would at some point know that their item has been stolen. I was never at a distance of > 2 to 3 metres from my bag except and had visibility of it throughout dinner, except when I went to the toilet, when my colleague was eatching over it.

4. It sounds to me like a pretty strange rule that a person needs to witness a theft – because if I did witness the theft, I would have stopped it. And therefore, there would be no need for an insurance

5. Regarding taking due care of the bag, either my colleague or I can inform you that it was never left unattended. It was always in view throughout the dinner, either my view, or my colleague's or both of us. But, even though I took reasonable and due care of the laptop and even though it was visible at all times, I did not stare at the laptop bag all evening during dinner (I don't think people normally stare at their luggage all the time) …. and I think this is what insurance is for, to cover a person for reasonable circumstances where there has been a theft

6. Finally, I would like to point you towards dual standards that this insurance company applies. A colleague of mine, …, had his ipad stolen from his hotel room. He made a claim, and was paid out. He did not witness the theft and didn't know exactly when the theft happened (as it could have happened at any time from early morning to late at night). At least in my case, I can identify a short window of time when the theft happened, can say definitely that the bag was with me and can say that I took reasonable care of the laptop bag throughout as it was always in sight … but the way it was stolen was simply unforeseen and unexpected, and two reasonable and professional people (myself and my senior colleague), were amazed and shocked that the laptop bag could have been stolen under these circumstances. I repeat, this is what I thought insurance was for. I fail to understand how my situation is worse than my colleagues situation, please request details of the case I just mentioned, with the same insurance company and compare the two cases

7. I am available to respond to any queries and provide any clarification that is needed. I'd appreciate if you can let me know by when you would make a decision on this."

Selskabet har den 20/8 2019 bl.a. redegjort for sagsforløbet og afgørelsen således:

"**Selskabets svar**
Klager var på forretningsrejse i [by], [land] fra 04.03.2019-07.03.2019. I denne forbindelse deltog han d. 04.03.2019 i en middag på en café. Klager har på skadesanmeldelsen anført, at hans computertaske, som indeholdt iPad med tastatur, briller, lommeregner, elektrisk tandbørste, manchetknapper, slips, trådløse høretelefoner, power bank, kuglepen, telefonoplader, solbriller og halstørklæde blev stålet mens han opholdt sig på caféen: *I was at a dinner with [colleague] at a Café in [city] and the laptop bag was stolen from the Café*. (Appendix 2 – skadesanmeldelse)

I forbindelse med vurderingen af kravet har sagsbehandleren stillet en række opklarende spørgsmål. Herunder hvor Klager og tasken befandt sig, mens hændelsen fandt sted. Hertil forklarer Klager, at tasken befandt sig mellem middagsbordet og et vindue bagest i restauranten, og at han og hans ledsager hver især forlod bordet på skift for at gå på toilettet. Begge gik endvidere sammen ud for at ryge udenfor i løbet af middagen. Klager bemærkede, at tasken var væk, da de betalte regningen og skulle til at forlade restauranten. (Appendix 3 - e-mail fra Klager 02.04.2019).

Selskabet modtog Klagers krav om erstatning d. 14.03.2019. Efter gennemgang af sagsforløb, herunder ovennævnte svar på opklarende spørgsmål, meddelte Selskabet d. 08.04.2019 afslag på dækning med den begrundelse, at forsikringen kun dækker tyveri af genstande der bæres på eller af den forsikrede, hvor tyveriet bemærkes i gerningsøjeblikket (§ 16). Selskabet fremhæver ved

samme lejlighed at forsikringen ikke dækker simpelt tyveri. (Appendix 4 – afslag på dækning 08.04.2019).

D. 03.05.2019 modtog Selskabet meddelelse om, at Klager ønskede at eskalere sagen, hvorefter denne blev givet videre til den Klageansvarlige. Efter fornyet gennemgang af sagen meddelte Selskabet fastholdelse af afslag på dækning d. 22.05.2019. I afslaget henvises til forsikringsbetingelsernes § 16, hvorunder forudsætningerne for dækning er anført. Heraf fremgår det, at forsikringen dækker tyveri af genstande som bæres på eller af den forsikrede, når tyveriet bemærkes i gerningsøjeblikket, hvorimod simpelt tyveri er undtaget for dækning iht. § 16.2.

Klager har i sin forklaring til Nævnet lagt vægt på, at der ikke kan være tvivl om, at tasken er blevet stålet. Hertil skal det imidlertid bemærkes, at Klager direkte adspurgt har svaret, at det er et mysterium, hvad der er sket: *Did you see exactly what happened? 'No, it remains a mystery. The staff at the restaurant were also very surprised. I went over the next day as well, just in case, someone took it by accident, and this was not the case. The restaurant had a CCTV camera, which they reviewed, but unfortunately the angle of the camera did not capture the specific corner of the restaurant where we were sitting.* ' (Appendix 3 - e-mail fra Klager 02.04.2019)

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 ikke står i modsætningsforhold til disses undtagelsesbestemmelser.

Da Klagers krav om erstatning udspringer af omstændigheder, der ligger uden for de positivt nævnte forudsætninger for dækning i § 16 og samtidig falder inden for undtagelsesbestemmelserne i § 16.2 vedrørende simpelt tyveri, fastholder Selskabet afslag på dækning. Selskabet henviser afslutningsvis til Nævnets kendelse i sagsnr. 93559."

Klageren har den 11/9 2018 bl.a. anført:

"I would like to add::
In commenting to my response to the Insurer's question: "Did you see what happened? ' … the insurance seems to be making it look like I was careless with the bag, when I truthfully and honestly just let them know what happened. When I say it remains a mystery how the theft occurred, I am just being honest and I stand by my statement. Because, of course it is a mystery – if I had seen the theft actually happening, then I would have stopped it! What else is insurance for? It is to pay out in case there is a theft – and most thefts occur under unforeseen circumstances, else the person from whom an item is stolen, would stop it.

In a separate instance, my colleague's phone got stolen, from his back pocket. Bupa, the same insurance company, in that instance paid out for the loss. Did my colleague know exactly when the theft happened – absolutely not. Was it a mystery how it happened, yes! Does that make the theft a non-real event, absolutely not, it's a real theft and the payout from the insurance was warranted.

In my case, the bag was never unattended in terms of either my colleague or me being always being a distance of no more than c.2 metres at any given point in time. It was always visible to us, di-

rectly or through the window glass. There was only 1 entry and exit from the restaurant. It was kept safely and there was no reckless behaviour on my part. I know for sure that I took it with me to the restaurant, I am not making that up, as my colleague is a witness. But, did I see it being stolen, of course not – else I would have stopped the thief from doing so.

Insurance companies should not be looking for get outs to not pay insurance when it is clearly due. This is just bad practice. And, it encourages people to embellish and twist facts of what actually happened, in order to stop insurance companies being able to get out of their commitments. This kind of a bad faith behaviour is bad for everyone, including insurance companies because this will lead to people lying and/or making up fraudulent claims to make up their losses from insurance claim rejects ….. which will eventually drive up insurance premiums for everyone. I urge the insurance company to consider this in reviewing their decision."

Af klagerens anmeldelse til selskabet af 14/3 2019 fremgår bl.a.:

" Information about the claim:
- Claim relates to: *Theft/burglary/robbery*
- At what time?: *9-10PM*
- When did the incident occure?: *04-03-2019*
- Where did the incident occur?: [country]
- Please describe the course of the event: *I was at dinner with my [colleague] at a Cafe in [town] and the laptop bag was stolen from the Cafe.*
…
Theft/burglary/robbery:
- Where was/were the object(s) kept?: *Next to our dinner table"*

Af klagerens svar på selskabets spørgsmål om hændelsesforløbet fremgår bl.a.:

"Where were you at the time of the theft? *At the restaurant. We were sat at a dinner table next to a window, next to the entrance door of the restaurant. The laptop bag was placed between the window and the dinner table, a little bit towards the back corner of restaurant. My colleague joined me for dinner. I went to the toilet during dinner, whilst he sat at the dinner table and my colleague went to the toilet whilst I sat at the dinner table. We also went outside for a cigarette break between courses and stood outside the window next to our dinner table. Our dinner table and my bags were in full vision during the cigarette break. When we finished dinner and paid and were ready to leave, I noticed the laptop bag was not there.*
• Where was the bag? *See above*
• When did you notice your bag containing the items had been stolen? *When we paid the bill and were ready to leave*
• How could you be sure, they were stolen then? *Because my laptop bag was not there, but my travel suitcase was there*
• Did you see exactly what happened? *No, it remains a mystery. The staff at the restaurant w ere also very surprised. I went over the next day as well, just in case, someone took it by accident, and this was not the case. The restaurant had a CCTV camera, which they reviewed, but unfortunately the angle of the camera did not capture the specific corner of the restaurant where we were sitting."*

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Af forsikringsbetingelserne fremgår bl.a.:

> "**Art. 16 Baggage**
> …
> **Cause / Item**
> …
> Simple theft: Baggage and electronic equipment - Not covered.
> …
> **Glossary**
> **…**
> Simple theft: Theft which is not noticed at the time of the theft being committed."

Nævnet udtaler:

Klageren har anmeldt, at han fik stjålet sin taske under en forretningsrejse.

Selskabet har afvist at yde dækning, idet forsikringen ikke dækker simpelt tyveri.

Klageren har overfor selskabet beskrevet hændelsesforløbet således: "Did you see exactly what happened? *No, it remains a mystery."*

Af forsikringsbetingelsernes punkt 16.2 fremgår det, at der ikke er dækning for "simple theft". Det fremgår videre af betingelsernes ordforklaring, at der med "simpel theft" skal forstås "theft which is not noticed at the time of the theft being committed."

Efter en gennemgang af sagen kan nævnet ikke kritisere, at selskabet har karakteriseret tyveriet af klagerens taske som simpelt, idet tasken blev stjålet fra et ikke-aflåst offentligt sted med begrænset opsyn.

Nævnet kan herefter ikke kritisere, at selskabet har afvist dækning, idet det simple tyveri ikke blev bemærket af klageren på tyveritidspunktet, hvilket efter forsikringsbetingelserne er et krav for, at selskabet skal yde dækning.

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Nævnet har blandt andet lagt vægt på, at klageren har oplyst, at tasken var placeret på gulvet ved siden af bordet på caféen, at han efter middagen konstaterede, at tasken var væk, at han ikke ved, hvordan tasken blev stjålet, og at der ikke var vidner til hændelsen.

Det af klageren anførte – herunder at en kollega fik dækning fra selskabet i en situation, som klageren betegner som lignende – kan ikke føre til andet resultat.

Som følge heraf

b e s t e m m e s :

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Klageren får ikke medhold.

Peter Thønnings