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New guidance on compensation reductions due to provision of incorrect information

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Introduction

In 2021 the Supreme Court issued a judgment establishing guidance on adjusting insurance compensation when applying Chapter 7 Section 3 of the Insurance Contracts Act (ICA). The guidance followed the Court's ruling on case T 898-20 dated 26 March 2021, in which an insured party maintained inaccurate information that had been provided to the insurer prior to the current claim.

An insurer depends on information provided by the insured when forming and applying a policy. This is important during both the insurer's initial assessment of the insured's risk and the insurance premium, as well as during the claims adjustment process. In the long-term, inaccurate information from one party may lead to other insured parties receiving increased insurance premiums. Therefore, the insured's honesty is critical during this process.

In accordance with Chapter 7 Section 3 of the ICA, an insured party (or any other person claiming compensation) may receive a reduced pay-out if they provided incorrect information or withheld details, either intentionally or due to gross negligence, that could affect the assessment of the claim. The provision applies to information provided or withheld after an insured event has occurred. According to the provision in the ICA, the reduction is to be made in accordance with "what is reasonable under the circumstances". The provision is applicable both with respect to consumer non-life insurance policies and corporate insurance policies.

Facts

In case T 898-20, an insured had submitted a claim to their insurer for a recreational vehicle that had been destroyed by a fire. Two months prior to the destruction of the vehicle, the insured had notified the insurer of another damage to the vehicle allegedly sustained after its purchase. However, it was later discovered that the damage had been present at the time of purchase.

The insurer subsequently denied the claimant's right to compensation for the fire damage on the grounds that the insured had intentionally provided inaccurate information regarding the timing of the earlier damage to the vehicle, which the insured had maintained throughout the claims handling process for the fire damage. The insured then initiated legal proceedings against the insurer.

The case was first adjudicated by the Stockholm District Court, and then by the Svea Court of Appeal. It was subsequently granted a leave to appeal by the Supreme Court. The main issue that the Supreme Court assessed was how the incorrect information provided intentionally during the claims handling process should affect the amount of compensation with respect to the consumer insurance policy.

Decision

The Supreme Court began its reasoning by concluding that the insurance system depends on the honesty of the policyholder and insureds and requires their loyalty to the insurer. According to the Court, taking legal action against disloyal behaviour must be possible and has resulted in provisions that allow for partial or total compensation reductions under certain circumstances. One such provision is Chapter 7 Section 3 of the ICA. The Court stated that according to the preparatory works that preceded the current ICA provision, the provision is not intended to compensate the insurer for damage, but to prevent, for example, insurance fraud and other dishonest behaviour. However, if the insurer has suffered financial loss, it might be entitled to compensation based on the general principles of tort law.

Regarding the assessment on reasonableness when determining the level of compensation reduction in accordance with the current provision, the Court concluded, with reference to the preparatory works, that all circumstances in the case at hand are to be considered in the assessment. These circumstances include the severity of liability and the amount of compensation the insured has tried to obtain through the provision of false information. According to the Court, an overall assessment needs to be made.

After discussing certain types of circumstances that could be considered in the assessment, the Supreme Court stated that, for practical reasons, a somewhat standardised approach often could be taken to determine the compensation reduction. Following this, the Supreme Court provided some guidance (summarised below). However, according to the Court the application of such guidance must always be followed by a general assessment of all circumstances of the case in question. This includes consideration of the effect the reduction will have on the insured, among others.

The Supreme Court's guidance can be summarised as follows:

- a 25% reduction in cases where incorrect information is provided due to gross negligence or where the information is provided intentionally but is of minor importance to the insurance claim at hand;
- a 50% reduction when the incorrect information is provided intentionally;
- a 75% reduction when the incorrect information is provided intentionally and there are other aggravating circumstances, for example, where the insured has attempted to claim a considerably higher amount than they are entitled to; and



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- a 100% reduction when the insured has used calculated methods to deceive the insurer, such as referring to falsified documentation or influencing a third party to provide the insurer with false information.

In the case at hand, the Supreme Court reduced the insurance compensation by 50%. The Court considered that the insured had intentionally maintained the false information regarding the previous damage during the handling of the fire damage claim, and that this information had not been of minor importance to the insurance matter. The Court did not find any aggravating circumstances that could motivate a reduction of more than 50% and considered after an overall assessment that a reduction by 50% seemed reasonable.

Comment

The guidance outlined by the Supreme Court in case T 898-20 provides some clarity as to how the assessment of what is reasonable should be made when applying Chapter 7 Section 3 of the ICA. This guidance will likely aid insurers and courts when applying the provision and increase the predictability of the compensation amount for insured parties.

While this case concerned a consumer non-life insurance policy, according to Chapter 8 Section 19 of the ICA, the provision in Chapter 7 Section 3 is also applicable to corporate insurance policies. Therefore, the Supreme Court's reasonings may also serve as guidance with respect to corporate insurance policies. However, as the question assessed by the Supreme Court was explicitly limited to consumer insurance, other considerations may apply in corporate insurance cases.

Chapter 16 Section 4 of the ICA, which applies to personal insurance policies, contains a provision that corresponds to Chapter 7 Section 3, suggesting the new guidance on compensation reduction could be used for personal insurance policies as well.

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