

ismail Vs. Venashan

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Court : Kerala

Decided On : Nov-26-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : ismail

Respondent : Venashan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN TUESDAY, THE 26TH DAY OF NOVEMBER 2013 5TH AGRAHAYANA, 1935 RFA.No. 28 of 2008 ()
----- AGAINST THE

JUDGMENT

IN OS 7501995 of ADDL.SUB COURT, IRINJALAKUDA, DATED 23-01-2002
APPELLANT/PLAINTIFF:- ----- KRISHNAKUMAR,
S/O.PARAMESWARAN, AGED 47 YEARS, LEELA NIVAS, MANAVALASSERY
VILLAGE IRINJALAKUDA, MUKUNDAPURAM TALUK. BY ADV. SRI.RENJITH
THAMPAN RESPONDENTS/DEFENDANTS:- ----- 1. BIJU DAVIS,
S/O.KOONAN DEVASSY, KARALAM VILLAGE, THANISSERY DESOM,
MUKUNDAPURAM TALUK.

2. JOSE, S/O.MOOKANAMPARAMBIL OUSEPH, MATTATHUR VILLAGE,
ETHUPADAM DESOM MUKUNDAPURAM TALUK.

3. THE MANAGER, UNITED INDIA INSURANCE COMPANY, BRANCH OFFICE, IRINJALAKUDA. R2 BY ADV. SRI.SHAJI CHIRAYATH R2 BY ADV. SMT.JIJI M. VARKEY R3 BY ADV. SRI.A.R.GEORGE R1 BY ADV. SRI.M.C.GOPI THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26.11.2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kvs/- S.S.SATHEESACHANDRAN, J.

===== I RFA.No.28 of 2008. ===== Dated this the 26th November, 2013.

JUDGMENT

Appeal is directed against the judgment and decree dated 23.1.2002 in OS.No.750/1995 passed by the learned Sub Judge, Irinjalakuda. Plaintiff is the appellant. Suit was one for compensation over the damages caused to a motor vehicle in an accident. Among other contentions raised contesting defendants challenged maintainability of the suit also. Civil court has no jurisdiction to entertain the suit when exclusive jurisdiction is conferred on the Tribunal constituted over the area under the Motor Vehicles Act to adjudge the claims for compensation over motor accidents, was the challenge to impeach the maintainability of suit. Suit was bad for non joinder of necessary parties was another contention raised to impeach its maintainability. Issues framed on questions canvassed as above with other issues were considered at the first instance by learned Sub RFA.No.28/2008. 2 Judge, and the judgment impugned under appeal was passed holding that civil court has no jurisdiction to entertain the suit. Challenge raised over non joinder of necessary parties was repelled, and that issue was found in favour of plaintiff. Dismissal of suit on the ground of want of jurisdiction by the court below is challenged by plaintiff in this appeal.

2. Plaintiff is the owner of a motor vehicle which was involved in an accident with another motor vehicle, a bus. After collecting the amount assessed towards damages of his vehicle from the insurer of that vehicle and settling the claim with his insurer, the present suit was filed by plaintiff against the owner and driver of the other vehicle, bus, bearing registration No.KRR5086 involved in the motor occurrence. His claim for compensation as canvassed was not allowed by his

insurance company. According to plaintiff the balance amount due on his claim, and also the amounts payable towards hire purchase instalments for the RFA.No.28/2008. 3 vehicle which were defaulted on account of the accident and revenue loss suffered by him due to non-operation of his taxi for a period of four months, have to be paid by defendants. A sum of Rs.57,000/- in toto was claimed towards compensation from defendants. His suit was found not maintainable before the civil court by the court below resulting in its dismissal.

3. I heard counsel for appellant and also that of third respondent insurance company. Exclusive jurisdiction is conferred on the Motor Accident Claims Tribunal to determine any claim for compensation in respect of person and property arising from the use of a motor vehicle is not a matter of dispute. There is a specific bar over the civil court in entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for the area with respect to which such tribunal has been constituted. Section 175 of the Motor Vehicles Act bars the jurisdiction of civil court from entertaining any RFA.No.28/2008. 4 claim for compensation over a motor accident when a Tribunal has been constituted on the area. Taking note of that specific provision under statute, the court below has held that the suit of the plaintiff would not lie before that court. Finding entered over the question of jurisdiction by the court below is unassailable. There is no merit in this appeal, and it is dismissed directing both parties to suffer their costs. Sd/- S.S.SATHEESACHANDRAN, (Judge) Kvs/- -// true copy //- PA TO JUDGE.

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