

\$~23, 24 & 25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: August 01, 2016

(i) + **FAO 188/2015**

KALINDI COLLEGE Appellant
Through: Mr. R.P. Sharma and Mr. Vaibhav
Mehra, Advocates

versus

KISHORE KUMAR & ORS Respondents
Through: Mr. R.K. Nain and Ms. Pratima N.
Chauhan, Advocates for
respondent No.1
Mr. Jaideep Malik, Advocate for
respondent No.2

(ii) + **FAO 243/2015**

KALINDI COLLEGE Appellant
Through: Mr. R.P. Sharma and Mr. Vaibhav
Mehra, Advocates

versus

GOPAL SINGH & ANR Respondents
Through: Mr. R.K. Nain and Ms. Pratima N.
Chauhan, Advocates for
respondent No.1
Mr. Jaideep Malik, Advocate for
respondent No.3

(iii) + **FAO 105/2016 & C.Ms.No. 8405-8406/2016**

M/S. GLOBAL ENGINEERING Appellant

Through: Mr. Jaideep Malik, Advocate

versus

KISHORE KUMAR & ANR.Respondents

Through: Mr. R.K. Nain, and Ms. Pratima N. Chauhan, Advocates for respondent No.1

Mr. R.P. Sharma, and Mr. Vaibhav Mehra, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%

(ORAL)

C.M.No. 14009/2015 in FAO 243/2015 (Delay)

There is 127 days' delay in re-filing the accompanying appeal.

For the reasons stated in the application, it is allowed and the delay is condoned subject to cost of ₹500/- to be deposited with the Delhi High Court Staff Welfare Fund.

Application stands disposed of.

C.M.No. 14006/2015 in FAO 243/2015 (Delay)

There is 43 days' delay in filing the accompanying appeal.

The reason put forth for the delay is that the appellant had exhausted the remedy of review, which resulted in the delay.

Sufficient cause is shown. The application is allowed and the delay is condoned.

Application stands disposed of.

FAO 188/2015 & C.M.No. 10745/2015

FAO 243/2015 & C.M.No. 14008/2015

FAO 105/2016 & C.Ms.No. 8405-8406/2016

The above captioned three appeals relate to an unfortunate incident of 6th July, 2010 in which a labourer-*Suresh* had died and another labourer-*Kishore Kumar* had sustained grievous injuries due to sudden fall of the lift in the *Kalindi College* where the construction work was going on in pursuance to an Agreement of 5th March, 2010 between appellants-*Kalindi College* and *M/s. Global Engineering*. An FIR relating to this incident was registered, though claim petitions were filed on behalf of the deceased-*Suresh* and by injured-*Kishore Kumar* after a delay of two years. The appellants-*Kalindi College* and *M/s. Global Engineering* knew about this unfortunate incident and they were under legal obligation to report it to the Commissioner under *the Workmen's Compensation Act, 1923* in terms of Section 10-B of the aforesaid Act. Such a course was not adopted. A claim petition was filed by the legal heirs of the deceased and by injured-*Kishore Kumar* in June, 2014 which was allowed, in the case of deceased vide order of 4th September, 2014 and in the case of injured-*Kishore Kumar* vide order of 24th October, 2014.

In the above captioned first appeal i.e. FAO 188/2015, the appellant-*Kalindi College* challenges the grant of compensation of ₹3,33,312/- with interest to injured-*Kishore Kumar*. In the above captioned second appeal i.e. FAO 243/2015, the challenge is to the grant of compensation of ₹8,90,840/- with interest in case of death of *Suresh* in this accident. In the above captioned third appeal i.e. FAO 105/2016, the

challenge is by the Contractor to the grant of compensation to injured-
Kishore Kumar.

With the consent of learned counsel for the parties, the above captioned three appeals were heard together and are being disposed of by this common judgment.

Learned counsel for appellant-*Kalindi College* submits that as per Clause 21 of Contract of 5th March, 2010 (Annexure A-1), the Contractor is a principal employer and, so he is liable to pay the compensation awarded. This is refuted by learned counsel for appellant-Contractor-*M/s. Global Engineering*, who draws the attention of this Court to Clause 18A of the aforesaid Contract which stipulates that under *the Workmen's Compensation Act, 1923*, the University/College is obliged to pay the compensation to the workmen employed by the Institution in execution of the construction work.

Learned counsel for appellant-*Kalindi College* draws the attention of this Court to Sub-section 2 of Section 12 of the *Workmen's Compensation Act, 1923*, which reads as under: -

“Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.”

It is also pointed out that Clause 18A of the aforesaid Contract (Annexure A-1) gives unqualified right to the College to recover the deposited amount of compensation from the Contractor.

After having heard learned counsel for the parties at length and on perusal of the impugned orders, the Contract in question and the material on record, this Court finds that in view of Clause 18A of the Contract (Annexure A-1), it is the responsibility of the principal employer to pay the compensation with a rider that it can recover compensation paid from the Contractor. This is otherwise also the mandate of Sub-section 2 of Section 12 of *The Workmen's Compensation Act, 1923*.

In the light of the aforesaid, these appeals are disposed of with direction that the awarded compensation so deposited by appellant-*Kalindi College* be released to the respondents-claimants. Since appellant-*Kalindi College* has a right to recover the awarded amount from the Contractor, therefore, in the facts and circumstances of this case, it is made clear that by virtue of this judgment, appellant-*Kalindi College* has the absolute right to recover the amount of awarded compensation from the Contractor i.e. *M/s. Global Engineering*. If this judgment is not complied with, then appellant-*Kalindi College* shall get this judgement implemented by filing execution petition before the Commissioner under *the Workmen's Compensation Act, 1923*. Since it is the case of appellant-*M/s. Global Engineering* that the lift/machine, which had fallen down, was brought from one *Sohan Lal*, therefore, it would be open to *M/s. Global Engineering* to proceed against the said *Sohan Lal* to recover the

compensation amount after it is paid by appellant-M/s. *Global Engineering*.

In the event of appellant-M/s. *Global Engineering* failing to deposit the awarded compensation amount in respect of the injury case as well as the death case, with the Commissioner under *the Employee's Compensation Act, 1923* within a period of 12 weeks from today, then appellant-Kalindi College shall be at liberty to get this judgment complied with.

The amount deposited by the appellant-Kalindi College with the Registry of this Court with interest accrued thereon be remitted to the Commissioner under *the Employee's Compensation Act, 1923* for disbursement to the respondents-claimants. Trial court records be sent back forthwith.

With aforesaid directions, the above captioned three appeals and the pending applications are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 01, 2016
radhika/s