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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No. 363/2016

7th February, 2017

M/s S.K. CONSTRUCTION CO.

..... Appellant

Through: Mr. Sudarshan Rajan and Mr. Arjun
Gadhoke, Advs.

versus

SH. SUBEDAR & ANR.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1.
Mr. Siddhartha Nagpal, for Mr.
Sumeet Pushkarna, standing counsel
for R-2 with Mr. Sharma, AE.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO No. 363/2016 & CM Nos. 28007/2016 (stay) & 5028/2017 (for sending the LCR to the learned Commissioner)

1. By this first appeal filed under Section 30 of the Employees Compensation Act, 1923, the appellant impugns the order of the Commissioner dated 9.5.2016 whereby the Commissioner has fastened the liability upon the appellant and respondent no.2 on account of death of one Sh. Sunil Kumar, son of the respondent no.1 herein, and who was the claimant before the Commissioner.

2. Learned counsel for the appellant has drawn my attention to para 7 of the impugned judgment dated 9.5.2016 that liability would also stand fastened against the appellant because the respondent no.2 herein against whom the order of compensation has been made has been held to be indemnified by the present appellant, and which is also the law. Learned counsel has drawn the attention of this Court to para 3 of the judgment and which shows that no notices were issued to the appellant in the subject proceedings by the Commissioner.

3. It is an undisputed fact appearing on record that appellant was never served in the proceedings under the Employees Compensation Act and which concluded when the impugned order of the Commissioner dated 9.5.2016 was passed. No liability under any judicial proceedings or quasi judicial proceedings can be fastened upon a person without the said person being noticed and his defence being considered. In the present case, there is admittedly a violation of principles of natural justice because appellant was never served in the subject proceedings which led to the passing of the impugned judgment dated 9.5.2016.

4. In view of the above, this writ petition is allowed and the matter is remanded back to the competent Commissioner under the Employees Compensation Act to decide the claim petition filed by the

respondent no.1 herein afresh. However, in view of the passage of time the Commissioner is requested to ensure that the proceedings are completed as soon as possible and not later than six months of the receipt of the present order. Appellant herein also will be bound to appear in the proceedings before the Commissioner and the Commissioner will not entertain more than two requests for adjournment on behalf of the appellant for the entire proceedings.

5. Since payment under the impugned order has already been made to the respondent no.1 herein, through the respondent no.2, this aspect will abide by the final judgment of the Commissioner.

6. Appeal is disposed of accordingly.

FEBRUARY 07, 2017
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VALMIKI J. MEHTA, J