

GAHC010016302021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/568/2021

RASHMI DAIMARY
W/O- LT. BIPUL KUMAR DAIMARY, VILL- KATAL GAON, P.O. AND P.S.
BOKO, DIST.- KAMRUP (R), ASSAM, PIN- 781123

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE (R
AND R) AND DISASTER MANAGEMENT DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE DY. COMMISSIONER
KAMRUP
AMINGAON
ASSAM
PIN- 781031

4:THE SUPERINTENDENT OF POLICE
KAMRUP
AMINGAON
ASSAM
PIN- 781031

5:THE CIRCLE OFFICER
BOKO REVENUE CIRCLE
P.O. AND P.S. BOKO
DIST.- KAMRUP
ASSAM

PIN- 781123

6:THE OFFICER-IN-CHARGE
AZARA P.S.
AZARA
KAMRUP (M)
ASSAM
PIN- 78101

Advocate for the Petitioner : MR. A MOBARAQUE

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

21.06.2023

Heard Mr. A. Hussain, learned counsel for the petitioner; Mr. A. Bhattacharya, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; Mr. B. Gogoi, learned Standing Counsel, Finance Department for the respondent no. 2; and Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 3 – 6.

2. The petitioner has instituted this writ petition under Article 226 of the Constitution of India seeking inter alia a direction to the State respondent authorities to disburse an amount of Rs. 2,00,000/- in terms of a Notification dated 15.11.2014 of the Revenue & Disaster Management Department, Government of Assam claiming that she is the Next of Kin [NoK] of a deceased person viz. Late Bipul Kumar Daimary. It is claimed that Late Bipul Kumar Daimary died in a road traffic accident occurred at a public place.

3. The petitioner has claimed to be the wife of the said deceased person, Late Bipul Kumar Daimary.

4. It is projected in the writ petition that the husband of the petitioner, Bipul Kumar Daimary a resident of Village – Katal Gaon, Police Station – Boko, District – Kamrup, was proceeding from

Jalukbari side towards Boko as a rider of a motorcycle bearing registration no. AS-25/K-7542 on 04.04.2019. When he reached a place near the Central School on 37 no. National Highway, another vehicle bearing registration no. AS-01/DP-3328 [Maruti Dezire] by coming from the same direction, allegedly driven in a rash and negligent manner, hit the motorcycle rode by the victim from backside. As a result of the accident, Bipul Kumar Daimary sustained grievance injuries on his person. Bipul Kumar Daimary was immediately admitted in the nearby health facility, Azara Primary Health Centre [PHC]. Finding his condition serious, Bipul Kumar Daimary was admitted, later on, at Gauhati Medical College & Hospital [GMCH], Guwahati for better treatment but he succumbed to the injuries at the GMCH on 04.04.2019 itself. The Post-Mortem Examination [PME] on the dead body of the deceased was performed at the GMCH on 04.04.2019. As per the PME report, the death was due to coma as result of heady injury, described therein. It was opined that all the injuries were caused by blunt force impact. In connection with the said incident, a crime case, Azara Police Station Case no. 232/2019 was registered under Sections 279/427/304A, Indian Penal Code. The office of the Registrar, Birth and Death, GMCH has issued a death certificate on 09.05.2019 recording the date of death of the deceased as 04.04.2019.

4.1. With the aforesaid projection, the petitioner has preferred the instant writ petition seeking inter alia a direction to the respondent authorities to release the quantum of Rs. 2,00,000/- in the form of ex-gratia in terms of the Notification dated 15.11.2014 of the Revenue & Disaster Management Department.

5. On perusal of the said Notification dated 15.11.2014, it is noticed that the same has, inter-alia, made a provision for ex-gratia grant to the Next of Kin [NoK] of person killed due to accident in public place or in public carrier [other than killed by extremist/terrorist, miscreants and due to firing of security forces] and such relief has been quantified at Rs. 2,00,000/- for each deceased person in respect of accident which had occurred in the State on or after the date of the Notification i.e. 15.11.2014. It is noticed that by the Notification dated 15.10.2014, the State Government had revised the quantum of relief in the form of ex-gratia in supersession of the previous Notification in that regard. It has been brought to the notice of the Court that due to certain ambiguity with regard to the term, 'public place', another Notification bearing no. R.R.94/2003/288 dated 15.10.2014 came to be issued by the Revenue & Disaster Management Department, Government of Assam for removal of the ambiguity. As per the Notification dated

15.10.2014 [supra], the word 'public place' will mean any street, alley, park, public building, any place of business or assembly open to or frequented by the public or any other place, which is open to the public view or to which public has access.

6. The learned counsel for the respondents have conjointly submitted that the petitioner has approached this Court directly without preferring any kind of application before the respondent authorities, more particularly, the respondent no. 3, who is the competent authority to examine the claim of ex-gratia grant in terms of the Notification dated 15.11.2014. It is submitted by them, in unison, that the petitioner has to approach the jurisdictional Deputy Commissioner, that is, the respondent no. 3 at first, by filing an application who shall examine the matter and verify the veracity of the claim of the petitioner with regard to, firstly, the alleged road traffic accident which stated to have occurred at a public place resulting in the death of the person, indicated above; secondly, the claim of the petitioner as one of the Next of Kins [NoKs] of the person who stated to have died as a result of the said alleged road traffic accident, and thirdly, the claim regarding occurrence of the accident at a public place.

7. As the rationale behind the policy formulated by the State Government and notified vide Notification dated 15.11.2014 is to give some succor to the Next of Kin [NoK] of a deceased who died in a road traffic accident, this Court is of the considered view that the petitioner in order to claim the ex-gratia relief notified vide the Notification dated 15.11.2014, shall approach the jurisdictional Deputy Commissioner, that is, the respondent no. 3 at first with an application along with all the supporting documents in support of such claim and the jurisdictional Deputy Commissioner shall, on receipt of such application, examine the veracity and entitlement of the claim of the petitioner for such ex-gratia grant by taking into consideration all the relevant aspects including the three aspects, as highlighted by the learned counsel for the State respondents, by calling for reports from the other concerned authorities wherefrom necessary. It is accordingly ordered. The petitioner shall submit an application as regards her claim for ex-gratia grant to the respondent no. 3 within a period of 3 [three] weeks from today along with all the supporting documents and upon receipt of such application, the respondent no. 3 shall examine the claim of the petitioner and if after the necessary enquiry and verification, the petitioner is found entitle to the ex-gratia grant, he shall forward a proposal to the Commissioner & Secretary to the Government of Assam, Revenue & Disaster Management Department for release of the ex-gratia

grant in terms of the Notification dated 15.11.2014 for disbursal to the petitioner or any other NoKs found entitled in terms of the notification dated 15.11.2014. The entire exercise shall be completed by the above respondent authorities within a period of 3 [three] months from the date of receipt of an application along with a certified copy of this order from the petitioner at the office of the respondent no. 3. The petitioner and/or any other NoKs of the deceased person is/are directed to extend her/their assistance and co-operation during the process of such enquiry and verification by the respondent no. 3 and shall furnish all the relevant information/documents available at her/their disposal to facilitate the process of enquiry and verification, as and when asked for.

8. With the observations made and directions given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant