

GAHC010050042020



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

Case No. : WP(C)/1836/2020

RAMJAN KHAN
S/O- LT. GOLAP KHAN, VILL. KHELLY, P.O. NIZ- RAMPUR, P.S. KALGACHIA,
DIST. BARPETA, ASSAM, PIN- 781319.

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 DY. COMMISSIONER
BARPETA
ASSAM
PIN- 781301.

3:THE SUPDT. OF POLICE
BARPETA
ASSAM
PIN- 781301.

4:THE OFFICER-IN-CHARGE
KALGACHIA POLICE STATION
KALGACHIA
BARPETA
ASSAM
PIN- 781319.

5:THE IN-CHARGE
BALIKUCHI POLICE OUT POST
BALIKUCHI
BARPETA
ASSAM

PIN- 781319.

6:THE CIRCLE OFFICER
RUPSHI REVENUE CIRCLE
RUPSHI
BARPETA
ASSAM
PIN- 781319

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

23.01.2023

Heard Mr. H.R. Ahmed, learned counsel for the petitioner; Mr. R. Borpujari, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2–6.

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 he is one of the Next of Kins [NoKs] of the deceased person viz. Late Ziaur Rahman Khan. It is claimed that Late Ziaur Rahman Khan died in a road traffic accident occurred at a public place.

3. The petitioner has claimed to be the father of the said deceased person, Late Ziaur Rahman Khan.

4. The case projected by the petitioner, in brief, is that at around 03-00 p.m. on 18.07.2015, while the son of the petitioner viz. Ziaur Rahman Khan was on his way to home

as a pillion rider in a motorcycle bearing registration no. AS-19/D-7903 with one of his friends as rider of the motorcycle from Janata Bazar side, the offending vehicle bearing registration no. AS-15/H-2428, coming in a rash and negligent manner and at a high speed, knocked down the motorcycle in front of Balukuchi F.S. Village near within Balikuchi Police Out Post, District – Barpeta. As a result of the accident, Ziaur Rahman Khan sustained grievous injuries and he was immediately taken to Barpeta Civil Hospital, Kalgachia. Finding his condition serious, he was referred to Fakaruddin Ali Ahmed Medical College & Hospital [FAAMCH], Barpeta but at the FAAMCH, Ziaur Rahman Khan succumbed to the injuries sustained. The Post-Mortem Examination [PME] on the deadbody of the deceased was performed at FAAMCH, Barpeta on 19.07.2015. As per the PME Report [Annexure-2], the death was due to hemorrhage resulting from injuries sustained on the chest and abdomen. All the injuries were reported to be ante-mortem in nature caused by blunt force. In connection with the said accident, a case, Kalgachia Police Station Case no. 733/2015 has been registered under Sections 179/304A, Indian Penal Code against the driver of the offending vehicle bearing registration no. AS-15/H-2428. In connection with the said accident, the Officer In-Charge, Kalgachia Police Station has issued a Police Report in Form no. 54 [Annexure-3]. The First Information Report [FIR] lodged in connection with Kalgachia Police Station Case no. 733/2015 is, however, not part of the case papers.

4.1. On an application being made, the Deputy Commissioner, Barpeta has issued a Next of Kin [NoK] certificate dated 12.03.2020 [Annexure-7] certifying that the deceased person had left the petitioner i.e. the father and Rahitan Nessa i.e. the mother as his Next of Kins [NoKs]. After the death of the afore-stated person, the petitioner stated to have submitted a representation dated 21.01.2017 [Annexure-5] before the Deputy Commissioner, Barpeta seeking the *ex-gratia* amount of Rs. 2,00,000/- for the deceased person in terms of the policy framed by the Government in the Revenue & Disaster Management Department and as notified by the notification dated 15.11.2014. When no response was received from the office of the Deputy Commissioner, Barpeta, the petitioner has approached this Court by this writ petition.

5. It has, thus, been contended on behalf of the petitioner that he is one of the Next of

Kins [NoKs] of the deceased person who died in a road traffic accident occurred on 18.07.2015 at a public place. It is further contended that as such Next of Kin [NoK] of the deceased person killed in such accident, he is entitled to receive the quantum of relief in terms of the policy formulated by the State Government, which has been notified by the notification dated 15.11.2014 [Annexure-4].

6. 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* grants 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 has been brought to the notice of the Court by the learned counsel for the parties 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.

7. By order dated 02.03.2020, the respondents were put to notice. But till date, no response has been filed by any of the respondents.

8. Both Mr. Borpujari and Mr. Baruah are not in disagreement to the fact that in this writ petition, the petitioner has claimed that the alleged road traffic accident in question had occurred subsequent to 15.11.2014. It is submitted by Mr. Borpujari and Mr. Baruah, in unison, that before placing the matter before the Commissioner and Secretary to the Government of Assam, Revenue & Disaster Management Department, the jurisdictional Deputy Commissioner shall have to examine the matter in order to 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, mentioned 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.

9. This Court has already recognized the rationale behind the policy formulated by the State and notified vide the notification dated 15.11.2014, in its order dated 04.05.2019 passed in the writ petition, W.P.[C] no. 2100/2019 [Gunalata Das vs. the State of Assam] and similar other writ petitions, by observing that the dominant purpose of the policy is to provide some succour immediately to the Next of Kin [NoK] of the deceased to tide over the initial shock and hardship before lodging claim for just compensation under the law. Thus, a claim for the relief of *ex-gratia* grant under the policy calls for an expeditious consideration.

10. Taking an overall view of the submissions advanced by the learned counsel for the parties and the rationale behind the policy so formulated, this Court is of the considered view that instead of keeping the writ petition pending for any further period, waiting for responses from the respondents, who have not filed any response since 06.03.2020, the same can be disposed of as the claim for relief in the form of *ex-gratia* to the petitioner in this writ petition as one of the Next of Kin [NoK] of the person killed in a road traffic accident, the facts of which are briefly narrated above, are to be verified and considered first at the end of the jurisdictional Deputy Commissioner. After such verification and consideration on all relevant aspects including the three aspects, as highlighted by the learned counsel for the State respondents, by calling for reports from the other authorities, the proposal can thereafter, be forwarded by the jurisdictional Deputy Commissioner along with his report, to the Commissioner and Secretary to the Government of Assam, Revenue & Disaster Management Department for release of *ex-gratia* amount in terms of the notification dated 15.11.2014, if the petitioner is found entitled to receive the same. The Commissioner and Secretary to the Government of Assam, Revenue & Disaster Management Department can thereafter, sanction the quantum of relief for disbursal to the petitioner and/or any other Next of Kins [NoKs] found entitled, in terms of the notification dated 15.11.2014. It is accordingly ordered. The entire exercise in respect of the case involved in this writ petition should be completed by the above respondent authorities within a period of 3 [three] months from the date of receipt of

a certified copy of this order by the office of Deputy Commissioner, Barpeta along with a copy of the writ petition with the annexures, from the petitioner. The petitioner and/or the other Next of Kins [NoKs] of the deceased person is/are directed to extend his/their assistance and cooperation during the process of such verification and shall furnish the relevant information/documents, available at his/their disposal, to facilitate the process of verification, as and when asked for.

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

JUDGE

Comparing Assistant