

GAHC010071712021



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

Case No. : WP(C)/2784/2021

MAFIZ UDDIN @ MAFIJ UDDIN
S/O LT. CHAND ALI, VILL. SADHUBASA PART-IV, P.O. MAKRIJHORA, P.S.
GAURIPUR, DIST. DHUBRI, ASSAM, PIN 783349

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, HOME AND POLITICAL DEPTT., DISPUR, GUWAHATI 06

2:THE ASSAM STATE LEGAL SERVICES AUTHORITY

REPRESENTED BY ITS MEMBER SECY. GHY-01

3:THE DIST. LEGAL SERVICES AUTHORITY
DHUBRI
ASSAM
REPRESENTED BY ITS MEMBER SECY.
P.O. AND P.S. DIST. DHUBRI
ASSAM
PIN 783301

4:THE CHAIRMAN

DIST. LEGAL SERVICES AUTHORITY
DHUBRI
ASSAM
P.O. AND P.S. AND DIST. DHUBRI
ASSAM
PIN 783301

5:THE DIST. LEGAL SERVICES AUTHORITY

SOUTH SALMARA MANKACHAR
HATSINGIMARI
ASSAM
REPRESENTED BY ITS MEMBER SECY.
P.O. AND P.S. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
HATSINGIMARI
ASSAM
PIN 783135

6:THE CHAIRMAN

DIST. LEGAL SERVICES AUTHORITY
SOUTH SALMARA MANKACHAR
HATSINGIMARI
ASSAM
P.O. AND P.S. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
HATSINGIMARI
ASSAM
PIN 78313

For the Petitioner(s) : Mr. M. Hussain, Advocate

For the Respondent(s) : Mr. S. Baruah, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 02.08.2023

1. The case of the Petitioner is that the son of the Petitioner namely Nowsad Ali (since deceased) was assaulted by the accused persons and he suffered grievous injuries and subsequently succumbed to his injuries. An FIR was lodged on 08.10.1994 which was registered and numbered as South Salmara P.S. Case No.211/1994 under Sections 147/148/149/341/325/326/302 IPC. Subsequent to the investigation being carried out, charge-sheet was filed against the accused persons under Sections 147/148/149/341/325/326/302 IPC.

The case was thereupon committed by Judicial Magistrate First Class, Dhubri to the Court of the Additional Sessions Judge, Dhubri which was registered and numbered as Sessions Case No.29/1996. The trial Court after taking evidence and hearing the parties, passed the judgment and order dated 24.07.2017 whereby the accused persons were convicted and sentenced them to undergo rigorous imprisonment for 4 (four) years and to pay fine of Rs.2,000/- each, in default Rigorous Imprisonment for 2 (two) months each under Section 304 Part-II IPC. However, there was no direction given in the said judgment for payment of compensation in terms with Section 357A of the Cr.P.C.

2. The learned counsel appearing on behalf of the Petitioner draws the attention of this Court to the provisions of Section 357A Cr.P.C. which is quoted as hereinunder:

“357A. Victim Compensation Scheme

(1) Every State Government in coordination with the Central Government shall pre/pare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District legal Services Authority or the State Legal service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is

identified and where no trial takes place, the victim or his dependents may make an application to the state or the District legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4) the State or the District legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

3. The learned counsel for the Petitioner submits that in terms with Section 357A Cr.P.C., the Government of Assam has framed the Assam Victim Compensation Scheme 2012. Vide the notification dated 01.02.2019 which have been enclosed as Annexure-3 to the writ petition, the quantum of compensation has been increased by amending the Schedule of the Assam Victim Compensation Scheme 2012. He submits that in the case of death, the amount of compensation is presently Rs.5,00,000/- (Rupees Five Lakhs). He further submits that the petitioner on coming to learn about the said scheme filed a representation before the Secretary, District Legal Services Authority, Dhubri, Assam on 29.04.2019 claiming the said compensation but the said compensation has not yet been awarded or paid to the petitioner for which the petitioner has filed the instant writ petition under Article 226 of the constitution of India.

4. This Court have duly taken note of the representation so submitted on

29.04.2019 before the Secretary, District Legal Services Authority, Dhubri, Assam wherein the Petitioner who is the father of the deceased (aged about 80 years) had stated that it is difficult to maintain his family as there is no source of income in view of the death of his son. It further transpires from the said representation that the deceased had left behind the Petitioner, his mother and brothers and sisters as legal heirs.

5. Upon perusal of the Assam Victim Compensation Scheme, 2012 which stipulates that to be eligible for compensation, the dependents are required to show that in view of the crime so caused, substantial loss has occasioned to the income of the family making it difficult to meet both ends without the financial aid. Accordingly, this Court is of the opinion that this aspect of the matter would require verification to be carried out at the end of the Respondent No.3.

6. In that view of the matter, the instant writ petition therefore stands disposed of thereby directing the Respondent Nos. 3 and 4 to carry out a verification as to whether the Petitioner herein would be eligible in terms with the Assam Victim Compensation Act, 2012 and if it is found that the Petitioner is eligible, then pass award within a period of 2 (two) months from the date a certified copy of the instant order is served upon the Respondent No.3 and thereupon submit a compliance report before the Registry of this Court. This Court further directs that the Respondent No.3 shall forward the award, if the Petitioner is found entitled, to the Respondent No.1. The Respondent No.1 shall on the basis of the said award, sanction the said amount in favour of the Petitioner and disburse the amount to the Respondent No.3 for onward disbursal to the Petitioner. The Respondent No.1 shall do the needful within 2 (two) months from the date of receipt of the award from the Respondent No.3. The Petitioner shall also serve a certified copy of this order to the Respondent No.1.

7. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant