

GAHC010071722021



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

Case No. : WP(C)/2758/2021

HASEN ALI AND ANR
S/O LT. BAHAR ALI, VILL. TANGBHITA KATLAMARI PT-3, P.O. KATLAMARI,
P.S. FAKIRGANJ, DIST. DHUBRI, ASSAM, PIN 783349

2: PUNNA KHATUN
W/O LT. SAMER ALI @ SOMER ALI
VILL. TANGBHITA KATLAMARI PT-3
(RIVER BLOCK)
P.O. KATLAMARI
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM
PIN 78334

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 SECRETARY
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3:THE DIST. LEGAL SERVICE AUTHORITY
DHUBRI
ASSAM
REPRESENTED BY ITS MEMBER SECY.
P.O. AND P.S. AND 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
	: Mr. A. K. Mollah, Advocate
	: Mr. S. I. Akand, Advocate

For the Respondent(s)	: Mr. N. Goswami, Advocate
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**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 04.08.2023

1. The case of the Petitioners is that the father of the Petitioner No.1 and husband of the Petitioner No.2 were murdered for which Petitioner No.1 has lodged an FIR which was registered and numbered as South Salmara P.S. Case No.243/2002 under Sections 147/148/149/447/325/326/307/302 IPC. Subsequent to the completion of investigation, the Investigating Officer had submitted the Charge sheet against the FIR named accused persons under Sections 147/148/149/447/323/324/325/307/302 IPC. Vide a judgment and order dated 10.07.2018 passed in Session Case No.35/2004, the learned Additional Sessions Judge, Dhubri has convicted the accused persons under Sections 147/323/324/302/149 IPC and sentenced them to imprisonment for life and also to pay a fine of Rs.1,000/- each in default Rigorous Imprisonment for 2 (two) months. The learned Additional Sessions Judge, Dhubri has also recommended for compensation to the wives of the deceased Late Bahar Ali and Late Samer Ali under Section 357(A) of the Code of Criminal Procedure.

2. The learned counsel for the Petitioners draws the attention of this Court to the provisions of Section 357(A) of Cr.P.C. which is quoted as hereinunder:

“357A. Victim Compensation Scheme

(1) Every State Government in coordination with the Central Government shall prepare 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 subsection (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. This Court has perused the judgment dated 10.07.2018 passed in Sessions Case No.35/2004 by the Additional Sessions Judge, Dhubri wherein at paragraph No.103, it was observed that the deceased Late Bahar Ali and Late

Samer Ali were the head of their family, so their wives were to be paid compensation. There was a direction issued upon the District Legal Services Authority, Dhubri to pay compensation to the wives of the deceased Late Bahar Ali and Late Samer Ali by determining the quantum.

4. It is relevant to take note of that the Petitioner No.1 is the son of Late Bahar Ali and the Petitioner No.2 is the wife of Late Samer Ali. Taking into account the judgment dated 10.07.2018 passed in Sessions Case No.35/2004, the direction was to pay compensation to the wives of Late Bahar Ali and Late Samer Ali by the District Legal Services Authority, Dhubri, the said Authority was bound by the said judgment in terms with Section 357(A) to comply with the said directions. This Court further takes note of the Assam Victim Compensation Scheme, 2012 (for short "the Scheme of 2012") as well as the notification dated 01.02.2019 whereby the minimum and maximum compensation to be payable on account of death was Rs.5,00,000/- (Rupees Five Lakhs).

5. Be that as it may, in respect to Late Bahar Ali, the application was filed by the Petitioner No.1 who was the son whereas the application so filed for Late Samer Ali was his wife Punna Khatun. These applications were received on 11.12.2018 by the Member/Secretary of the Assam State Legal Services Authority which was thereupon forwarded to the Chairman of the District Legal Services Authority, Dhubri.

6. This Court further finds it relevant to take note of the affidavit-in-opposition so filed by the Respondent Nos. 5 and 6 through its Secretary and Chairman of the District Legal Services Authority, South Salamara, Mankachar, Hatsingimari, Assam wherein it is the specific stand that no representations were received by the Office of the DLSA, South Salamara, Mankachar. Taking into account the

judgment and order dated 10.07.2018, this Court is of the opinion that the wives of Late Bahar Ali as well as Late Samer Ali (Petitioner No.2) would be entitled to compensation in terms with the Scheme of 2012 as well as the notification dated 01.02.2019.

7. This Court also finds it relevant taking into account various documents placed on record wherein it shows that on account of non-releasing of funds, the compensation under the Scheme of 2012 had not been disbursed. Be that as it may, this Court cannot be unmindful of the fact that upon the death of their husbands, the wives of Late Bahar Ali and Late Samer Ali have been put into a penurious state and as such, it is the duty in terms with the Scheme of 2012 as well as the notification so issued by the Government of Assam to release the compensation at the earliest.

8. Accordingly, this Court therefore directs the Respondent Nos. 3 and 4 to pass appropriate awards for compensation in favour of the wife of Late Bahar Ali as well as to the Petitioner No.2 in terms with the Scheme of 2012 read with the notification dated 01.02.2019 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 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 Petitioners and disburse the amount to the Respondent No.3 for onward disbursement to the wives of Late Bahar Ali and Late Samer Ali. 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 Petitioners shall also serve a certified copy of this order to the Respondent No.1.

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

JUDGE

Comparing Assistant