

GAHC010150932022



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

Case No. : WP(C)/5027/2022

MOFIDUL ISLAM
S/O- KUDDUS ALI,
VILL- SHAWARACHARA GAON,
P.O.- CHINKI,
P.S.- KALGACHIA,
DIST- BARPETA, ASSAM.
PIN- 781321.
PRESENT ADDRESS- VILL- RAKSYASINI, P.O. AND P.S. MORNOL, DIST-
GOALPARA, ASSAM, PIN- 783101.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE (RELIEF AND REHABILITATION) AND DISASTER
MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
P.O. AND P.S. AND DIST- DHUBRI
ASSAM
PIN- 783301.

4:THE DEPUTY COMMISSIONER
BARPETA
ASSAM
P.O. AND P.S. AND DIST- BARPETA
ASSAM
PIN- 781301.

5:THE CIRCLE OFFICER
KALGACHIA REVENUE CIRCLE
P.O. AND P.S.- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319.

6:THE SUPERINTENDENT OF POLICE
DHUBRI
ASSAM
P.O. AND P.S. AND DIST- DHUBRI
ASSAM
PIN- 783301.

7:THE OFFICER-IN-CHARGE
CHAPAR POLICE STATION
P.O.- CHAPAR
DIST.- DHUBRI
ASSAM
PIN- 783371

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 03-02-2023

Heard Mr. M. Hussain, learned counsel for the petitioner; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; and Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent nos. 3 – 7.

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 Rohmot Ali. It is claimed that Late Rohmot Ali died in

a road traffic accident occurred at a public place.

3. The petitioner has claimed to be the son of the said deceased person, Late Rohmot Ali.

4. The case projected by the petitioner, in brief, is that at around 10-00 p.m. on 17.10.2016, the petitioner and his son, Rohmot Ali along with 3 [three] other family members were proceeding from Bilasipara to Goalpara by the petitioner's 4-wheeler vehicle bearing registration no. AS-18/D-7732 by the National Highway no. 31. When the vehicle reached at a place near Dhirghat under Chapar Police Station, another vehicle bearing registration no. WB-76/A-0547 [Truck], coming in a rash and negligent manner and at a high speed, hit the vehicle of the petitioner from backside and as a result of the impact, the vehicle whereby the petitioner was travelling, fell down to the side of the road. As a result of the accident, the petitioner's minor son, Rohmot Ali, aged about 3 years, died instantaneously at the spot and the other persons inside the vehicle received various nature of injuries. The Post-Mortem Examination [PME] of the dead body of the petitioner's son [Rohmot Ali] was performed at the Civil Hospital, Dhubri. In connection with the accident, a First Information Report [FIR] was lodged by the petitioner before the Officer In-Charge, Chapar Police Station on 22.10.2016 and the said FIR was registered as Chapar Police Station Case no. 404/2016 under Sections 279//338/304A, IPC on 22.10.2016 and investigation ensued. The Officer In-Charge, Chapar Police Station in the course of investigation issued a Police Report on 25.10.2016 in connection with the accident in question. The Registrar of Birth & Deaths, Chapar PHE had also issued a death certificate on 01.12.2016 [Annexure-4] recording the factum of death of Rohmot Ali on 17.10.2016.

4.1. After the death of the afore-stated person, the petitioner stated to have submitted a Representation dated 14.09.2022 before the Deputy Commissioner, Dhubri 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, Dhubri, the petitioner has approached this Court by this writ petition.

5. The respondent no. 2 and the respondent no. 6 have filed their respective counter affidavits. The respondent no. 6 in the counter affidavit has admitted about the registration of Chapar Police Station Case no. 404/2016 under Sections 279/338/304A, IPC. It has been stated that after completion of investigation in connection with Chapar Police Station Case no. 404/2016, the Investigating Officer [I.O.] of the case had already submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 210/2016 dated 31.12.2016 finding a *prima facie* case for the offences under Sections 279/338/304A, IPC. The issuance of a Police Report by the Officer In-Charge, Chapar Police Station on 25.10.2016 has also been admitted by the respondent no. 6 in his affidavit-in-opposition.

5.1. The respondent no. 2 in his counter affidavit has acknowledged about the receipt of an application from the petitioner for **ex gratia** grant. On receipt of the application from the petitioner, a report had been sought for from the Superintendent of Police, Dhubri and Superintendent of Civil Hospital, Dhubri. An information has also been sought from the Additional Deputy Commissioner, Barpeta as regards the Next of Kin [NoK] status of the petitioner as well as the deceased person as the petitioner is a resident of Barpeta. It has been averred that information are sought for for preparation of a requisite proposal for sanction of **ex gratia** and to forward it to the Government.

6. The contention advanced on behalf of the petitioner is that she is one of the Next of Kins [NoKs] of the deceased person who died in a road traffic accident occurred on 03.03.2021 at a public place. It is further contended that as such Next of Kin [NoK] of the deceased person killed in such accident, she 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.

7. 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 the deceased person in respect of the 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.

8. Mr. Bhattacharjee and Mr. Talukdar 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. Bhattacharjee and Mr. Talukdar, 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 further responses from the respondents, 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. It is noticed that the jurisdictional Deputy Commissioner has already initiated the process of verification for the purpose of preparing a proposal, if entitled. Thus, 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, examine and sanction the quantum of relief for disbursement to the petitioner and/or any other Next of Kins [NoKs], if 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, Dhubri 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