

GAHC010158022022



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

Case No. : WP(C)/5316/2022

PARTHA PRATIM DEKA AND ANR.
S/O- SHANTARAM DEKA @ SANTA DEKA
VILL-KHUDRAHAZARA,
P.O- BHOMOLAHATI,
P.S-BAIHATA CHARIALI,
DIST- KAMRUP (R), ASSAM, PIN-781121

2: RINKU DEKA @ RINKUMANI DEKA
S/O- SHANTARAM DEKA @ SANTA DEKA
VILL-KHUDRAHAZARA

P.O- BHOMOLAHATI

P.S-BAIHATA CHARIALI

DIST- KAMRUP (R)
ASSAM
PIN-78112

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE (RELIEF AND REHABILITATION) AND D.M.
DEPARTMENT, GOVT. OF ASSAM, DISPUR, GUWAHATI- 781006, ASSAM.

2:THE DEPUTY COMMISSIONER

KAMRUP (RURAL)

AT AMINGAON
ASSAM
P.O- AMINGAON
P.S- NORTH GUWAHATI

PIN-781031

3:THE CIRCLE OFFICER
KAMALPUR REVENUE CIRCLE

P.O AND P.S- KAMALPUR
DIST- KAMRUP (R)
ASAM
PIN-781380

4:THE OFFICER IN CHARGE
BAIHATA CHARIALI POLICE STATION

P.O -BAIHATA CHARIALI
DIST- KAMRUP (R)
ASSAM
PIN-78138

Advocate for the Petitioner : MR. R Deka

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

07.06.2023

Heard Mr. S.I. Akand, learned counsel for the petitioners; Mr. A. Bhattacharya, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; and Mr. B. Doeri, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4.

2. The petitioners have instituted this writ petition under article 226 of the Constitution of India seeking inter alia a direction to disburse ex-gratia grant in terms of the Notification dated 15.11.2014 of the Revenue [Relief & Rehabilitation] and Disaster Management Department on the premise that the mother of the petitioners, Nilima Deka expired in a road traffic accident occurred at a public place on 17.06.2020.

3. The petitioners have claimed to be the sons of the said deceased person, Late Nilima

Deka.

4. The case projected by the petitioners, in brief, is that at around 10-00 a.m. on 17.06.2020, their mother was proceeding from her residence at Village – Khudrahazara towards Village - Karara as a pillion rider in a motorcycle bearing registration no. AS/25-Q/1306 with one Sri Dharmal Deka as the rider of the motorcycle. When the motorcycle reached Village – Karara, the mother of the petitioners fell down from the motorcycle on the Karaara PWD road near the Indian Overseas Bank due to rash and negligent driving on the part of the rider of the motorcycle. Nilima Deka was immediately admitted at a health facility, Critical Care Hospital, Guwahati but during the course of treatment, she breathed her last on 19.06.2020. The post-mortem examination on the dead body of the deceased was performed at the Gauhati Medical College & Hospital at Guwahati on 19.06.2020. As per the post-mortem examination report, the death was due to coma resulting from head injury, mentioned therein. It was opined that the injuries were ante-mortem in nature and caused by blunt force impact. In connection with the said accident, a case being Baihata Chariali Case no. 256/2020, was registered under Sections 279/304A, IPC on 21.07.2020 on the basis of a First Information Report [FIR] lodged by the petitioner no. 1 as the informant.

4.1. On an application being made, the Sub-Divisional Officer [Civil], Rangia, Kamrup has issued a Next of Kin [NoK] Certificate on 28.07.2022, recording that the two petitioners being the NoKs of Late Nilima Deka, are her NoKs. The office of the Registrar of Birth & Death, Gauhati Medical College & Hospital, Guwahati has issued a Death Certificate on 30.07.2020 recording the date of death of Late Nilima Deka as 19.06.2020. After the death of their mother, the petitioners stated to have submitted a representation dated 22.07.2020 before the Deputy Commissioner, Kamrup [Rural] seeking 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, Kamrup [Rural], the petitioners have approached this Court by this writ petition.

5. It has, thus, been contended on behalf of the petitioners that they are the Next of Kins [NoKs] of the deceased person who died in a road traffic accident occurred on 17.06.2020 at a public place. It is further contended that as such Next of Kins [NoKs] of the deceased person

killed in such accident, they are 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.

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 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.

7. By order dated 20.03.2023, the respondents were put to notice. But till date, no response has been filed by any of the respondents.

8. Both Mr. Bhattacharya and Mr. Deori are not in disagreement to the fact that in this writ petition, the petitioners have claimed that the alleged road traffic accident in question had occurred subsequent to 15.11.2014. It is submitted by Mr. Bhattacharya and Mr. Deori, 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 petitioners, 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 petitioners 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, the same can be disposed of as the claim for relief in the form of ex-gratia to the petitioners in this writ petition as the Next of Kins [NoKs] of the person killed in a road traffic accident, the facts of which are briefly narrated above, is to be verified and considered first at the end of the jurisdictional Deputy Commissioner. After such verification and consideration of all 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, wherever necessary, 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 petitioners are 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 disbursement to the petitioners 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, Kamrup [Rural] along with a copy of the writ petition with the annexures, from the petitioners. The petitioners and/or the other Next of Kins [NoKs] of the deceased person are directed to extend their assistance and cooperation during the process of such verification and shall furnish the relevant information/documents, available at 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