

GAHC010232212022



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

Case No. : WP(C)/7562/2022

FIROJA BEGUM
W/O- LT. KHALILUR RAHMAN, VILL- MARUWA CHOWKI, P.O. MARUWA
CHOWKA, P.S. SIPAJHAR, DIST.- DARRANG, ASSAM, PIN- 784145

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE
(RELIEF AND REHABILITATION) AND DISASTER MANAGEMENT DEPTT.,
DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE DY. COMMISSIONER
DARRANG
ASSAM
P.O. AND P.S. AND DIST.- DARRANG
ASSAM
PIN- 784125

4:THE DY. COMMISSIONER
KAMRUP (R)
AMINGAON
ASSAM
PIN- 781031

5:THE CIRCLE OFFICER
SIPAJHAR REVENUE CIRCLE
P.O. SIPAJHAR
P.S. SIPAJHAR
DIST.- DARRANG

ASSAM
PIN- 784145

6:THE SUPERINTENDENT OF POLICE
KAMRUP (R)
ASSAM
PIN- 781031

7:THE OFFICER-IN-CHARGE
NORTH GUWAHATI P.S.
P.O. NORTH GUWAHATI
DIST.- KAMRUP (R)
ASSAM
PIN- 78103

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 27-03-2023

Heard Mr. M. Hussain, learned counsel for the petitioner; Ms. P.R. Mahanta, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. B. Gogoi, learned Standing Counsel, Finance Department for the respondent no. 2; and Mr. M. Chetia, 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 ₹ 2,00,000/- in terms of a Notification dated 15.11.2014 of the Revenue & Disaster Management Department, Government of Assam claiming that she is the Next of Kin [NoK] of the deceased person viz. Late Fakhrul Islam. It is claimed that Late Fakhrul Islam died in a road traffic accident occurred at a public place.

3. The petitioner has claimed to be the mother of the said deceased person, Late Fakhrul Islam.

4. The case projected by the petitioner, in brief, is that the son of the petitioner, Fakhrul Islam was a driver of a vehicle bearing registration no. AS-01/BM-0380 [Swift]. On 16.08.2021, Fakhrul Islam was proceeding by the said vehicle towards Lokpriya Gopinath Bordoloi Airport with passengers in the vehicle. At around 12-30 a.m., when the vehicle was proceeding by the Old Saraighat Bridge, Fakhrul Islam lost control of the vehicle and as a result, the vehicle fell down below the bridge by breaking the railing of the bridge. All the occupants of the vehicle including Fakhrul Islam sustained grievous injuries. Fakhrul Islam was immediately taken to a nearby health facility, Tolaram Bafna Civil Hospital, Kamrup, Amingaon for treatment but the doctors there, declared Fakhrul Islam as brought dead. The Post-Mortem Examination [PME] of the dead body of Fakhrul Islam was performed at Gauhati Medical College & Hospital [GMCH], Guwahati on 16.08.2021. As per the PME Report, the death was due to shock and hemorrhage as a result of injuries sustained over the chest and abdomen. It was opined that all the injuries were ante-mortem in nature and were caused by blunt force impact. In connection with the accident, a First Information Report [FIR] was lodged before the In-Charge, Traffic, Amingaon and on receipt of the FIR, a case, North Guwahati Police Station Case no. 133/2021 has been registered under Sections 279/304A/427, IPC on 01.09.2021.

4.1. On an application being made, the office of the Deputy Commissioner, Darrang has issued a Next of Kin [NoK] Certificate on 06.07.2022, recording that the petitioner as the mother, 3 [three] elder sisters and 3 [three] brothers, mentioned therein, are the Next of Kins [NoKs] of Late Fakhrul Islam. The office of the Registrar of Birth & Death, TRB Kamrup Civil Hospital, Amingaon, Guwahati-31 has issued a Death Certificate on 22.10.2021 recording the factum of death of Fakhrul Islam on 16.08.2021. After the death of her son, the petitioner stated to have submitted a Representation dated 16.08.2022 before the Deputy Commissioner, Kamrup, Amingaon seeking the **ex gratia** amount of ₹ 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, Darrang, the petitioner has approached this Court by this writ petition.

5. It has, thus, been contended on behalf of the petitioner that she is one of the Next of Kins [NoKs] of the deceased person who died in a road traffic accident occurred on 16.08.2021 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.

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 ₹ 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 19.12.2022, the respondents were put to notice. But till date, no response has been filed by any of the respondents. Mr. Chetia, learned Junior Government Advocate, Assam has, however, placed a letter bearing no. Crime/IV-WP[C]/No. 7562/22/2023/157 dated 11.01.2023 from the office of the respondent no. 6. In the letter dated 11.01.2023, the fact of registration of North Guwahati Police Station Case no. 133/2021 has been admitted. It is further mentioned that after completion of investigation, the Investigating Officer [I.O.] of the case had submitted a final report vide Final Report no.

64/2021 dated 19.10.2021. The occurrence of the accident and the resultant death of Fakhru Islam were admitted in the letter dated 11.01.2023. Mr. Chetia has also placed a letter bearing no. DDM.01/2016/Pt/141 dated 15.02.2023 from the office of the respondent no. 3. As per the said letter, the office of the respondent no. 3 had collected the requisite documents viz. [1] the Next of Kin [NoK] Certificate, [2] Gaon Pradhan Certificate and [3] Bank Account Details of the Next of Kins [NoKs] and has mentioned that those documents would be submitted to the office of the respondent no. 4.

8. Both Ms. Mahanta and Mr. Chetia 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 Ms. Mahanta and Mr. Chetia, 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 counter

affidavits from the respondents, the same can be disposed of as the claim for relief in the form of **ex gratia** to the petitioner raised 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, 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 petitioner and/or other Next of Kins [NoKs] is/ 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 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, Darrang 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 her/their assistance and cooperation during the process of such verification and shall furnish the relevant information/ documents, available at her/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