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

Case No. : WP(C)/4798/2017

NURJAHAN SULTANA
REPRESENTED BY HER GRANDMOTHER, HAMSA BIBI, W/O. SALIM ALI,
R/O. DAISINGARI VILLAGE, BARPETA DISTRICT, ASSAM.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT.
OF ASSAM, HEALTH and FAMILY WELFARE A DEPTT., DISPUR, GUWAHATI-
781006, ASSAM.

2:THE DIRECTOR

DIRECTORATE OF HEALTH SERVICES
GOVT. OF ASSAM
HENGRABARI
GUWAHATI-781036
ASSAM.

3:THE MISSION DIRECTOR

NATIONAL HEALTH MISSION
JAYA NAGAR
KHANAPARA
GUWAHATI
ASSAM.

4:MEDICAL OFFICER

PATHSALA SUB-DIVISIONAL HOSPITAL
ASSAM.

5: SUPERINTENDENT

FAKHRUDDIN ALI AHMED MEDICAL COLLEGE and HOSPITAL
BARPETA
ASSAM.

6: THE COMMISSIONER and SECRETARY

DEPTT. OF PANCHAYAT and RURAL DEVELOPMENT
'C' BLOCK
2ND FLOOR
ASSAM SECRETARIAT
GUWAHATI
ASSAM
PIN-78006.

7: THE UNION OF INDIA

REP. BY THE SECRETARY OF MINISTRY OF HEALTH AND FAMILY
WELFARE
GOVT. OF INDIA
NEW DELHI

Advocate for the Petitioner : Mr. S. K. Chakma, Advocate

Advocate for the Respondents : Mr. B. Gogoi, SC, Health

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 11.11.2024

Date of Judgment : 11.11.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. K. Chakma, the learned counsel appearing on behalf of the petitioner. Mr. B. Gogoi, the learned counsel appears on behalf of the Health and Family Welfare Department

of Assam.

2. The petitioner who is a minor presently is represented by her grandmother. In the instant writ petition, certain directions have been sought for which are as follows:-

(i) To issue a direction for a constitution of a Committee of doctors including a pediatrician and a dietitian for charting out a nutritious dietary plan for the petitioner for the next two years;

(ii) To issue direction for making provisions of the nutritional requirements of the petitioner free of cost by the respondent No.1 at least for the next two years in accordance to the dietary plan and charted out; and

(iii) To issue direction for payment of compensation of an amount of Rs.2,00,000/- to the petitioner and her family for the maternal death of the petitioner's mother and the failure of the State Public Health System to protect her and the trauma caused to the petitioner and her family.

3. It is relevant to take note of that the first two directions so sought for have already become infructuous taking into account the passage of time. However, the question arises as to whether the petitioner would be entitled to any compensation as has been sought for in the writ petition.

4. For deciding the above aspect, this Court finds it relevant to take note of the affidavits filed by both the respondent No.5 as well as the respondent No.2. In the said affidavits filed by the respondents, it has been mentioned that the petitioner's mother was admitted at 10:30 AM on 10.04.16 by hospital monthly Sl. No.86. During that time, all findings were normal except mild hypertension. After getting all necessary care and treatment to the petitioner's mother during the morning hours, she was prepared for conducting the normal delivery. In the afternoon, the Medical Officer examined the case and delivered a healthy baby at 1:10 PM without any untoward incident and the baby was handed over to the mother and she was shifted to the Post-Natal Ward. In the Post-Natal Ward, normal regular immediate post-natal checkup were done according to the protocol and the petitioner's mother was found to be stable. At around 3:30 PM, the petitioner's mother complained about sudden convulsion and then as per medical protocol, resuscitation was done but the petitioner's mother did not regain consciousness and it was decided to send the petitioner's mother to the nearest higher centre that is the Fakaruddin Ali Ahmed Medical College & Hospital (FAAMCH) for better evaluation and treatment. The Government ambulance was contacted. However, at that very point of time, the Government ambulance was busy with another

patient. Under such circumstances, the attendants of the petitioner's mother took a decision to hire a private ambulance. It was also mentioned that after resuscitation the patient's vitals were stabilized for referral fitness and then shifted to FAAMCH.

5. It is further seen from the affidavit filed by respondent No.5 who is the Superintendent of the FAAMCH wherein it was mentioned that the patient upon being referred to the hospital on 10.04.2016 was admitted at 4:42 PM. Thereupon, diagnosis was carried out and it was found to be a case of suspected cerebrovasculare accident with severe anemia. It was also mentioned that various necessary possible measures were taken and necessary treatment was also given to her, but in spite of all efforts to revive, the petitioner's mother expired at 7:45 PM on 10.04.2016 in the hospital.

6. It is further relevant to take note of that these affidavits were filed on 13.05.2023 and 29.11.2023. There has been no affidavit-in-reply filed thereafter inspite of various opportunities.

7. Under such circumstances, on the basis of the materials on record, it cannot be said that a case of negligence has been made out for entitlement of compensation.

8. Considering the above, this Court is of the opinion that the petitioner cannot be granted compensation on account of

Constitutional tort on the basis of the materials on record.

9. Accordingly, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant