

GAHC010103502023



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

Case No. : WP(C)/2700/2023

MONISA KHATUN @ MONISHA KHATUN
W/O- LATE RAHUL HOQUE, VILL.- BHAKUAMARI, P.O. SAPATGRAM, P.S.
GOSSAIGAON, DIST. KOKRAJHAR, BTR, ASSAM, PIN- 783337.

VERSUS

THE STATE OF ASSAM AND 5 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 DEPUTY COMMISSIONER

BONGAIGAON
ASSAM
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 783380.

3:THE DEPUTY COMMISSIONER

KOKRAJHAR
BTR
ASSAM
P.O.
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783370.

4:THE CIRCLE OFFICER

DOTMA REVENUE CIRCLE
P.O. DOTMA
P.S. GOSSAIGAON
DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783360.

5:THE SUPERINTENDENT OF POLICE
BONGAIGAON
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 783380.

6:THE OFFICER-IN-CHARGE
ABHAYAPURI POLICE STATION
P.O. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN- 783384

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocate for petitioner	M. Hussain, R.I. Mondal.
Advocate for respondent no.1	A. Bhattacharyya, S.C. Revenue.
Advocate for respondent nos. 2-6	Ms. M. Barman, G.A.
Date of hearing	01.05.2024
Date of judgment	21.06.2024

JUDGMENT AND ORDER

(CAV)

Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Mr. A. Bhattacharyya, learned standing counsel for the Revenue Department, representing the State respondent no.1 and Ms. M. Barman, learned Govt. Advocate, representing State respondent nos. 2 to 6.

2) The Commissioner and Secretary to the Govt. of Assam, Relief

and Rehabilitation Department had issued a notification dated 22.09.1998, to provide *ex gratia* and financial assistance to the persons who were killed/ injured due to extremist violence/ terrorist violence/ acts of miscreant/ communal violence/ ethnic violence/ group-clash/ firing of security forces/ accident, etc., who were kidnapped/ abducted by the extremist/ terrorist/ miscreants and whose dwelling houses are fully burnt/ damaged whether due to acts of extremist/ terrorist/ miscreants or during communal violence/ ethnic violence/ group clash. The quantum of compensation was revised by another notification no. RR.33/2014/66 dated 15.11.2014, issued by the Addl. Chief Secretary to the Govt. of Assam, Revenue and Disaster Management Department.

3) On 12.05.2021, Ajial Hoque, the father-in-law of the petitioner had lodged an FIR before the Officer-In-Charge, North Salmara Police Outpost that on 06.05.2021, at about 3.00 PM, his son Rahul Hoque along with his colleague were proceeding towards home from Garodokan on a scooter bearing registration no. AS-01-ES-6958 and they were hit by a commercial vehicle bearing registration no. AS-17C-0121 coming from opposite direction in NH-31 at Khargapur and as a result, his son had died on the spot. The dead body was taken to Bongaigaon Civil Hospital, where post-mortem examination was conducted. Accordingly, Abhayapuri P.S. Case No. 430/2021 under sections 279, 304-A, 338, 427 IPC was registered.

4) After obtaining the death certificate and Next of Kin certificate, the petitioner, who is the wife of the deceased, had submitted a representation before the Deputy Commissioner, Bongaigaon (now District Commissioner, Bongaigaon). As the petitioner has not been paid the *ex gratia* amount, the present writ petition has been filed under Article 226 of the Constitution of

India.

5) In support of his submissions in favour of entitlement to *ex gratia*, the learned counsel for the petitioner has cited the following cases, viz., (i) *National Insurance Co. Ltd. v. Birender & Ors.*, (2020) 11 SCC 356; (ii) *Sube Singh v. State of Haryana & Ors.*, (2006) 3 SCC 178; (iii) *Lakshi Das & Ors. v. Gyanendra Dev Tripathi & Ors.*, 2023 (2) GLT 850; (iv) *Gunalata Das & Ors. v. The State of Assam & Ors.*, W.P.(C) 2100/2019 and connected cases, decided by this Court by a common order dated 04.05.2019, (v) *Sujit Nandi & Ors. v. The State of Assam & Ors.*, W.P.(C) 8815/2019 and other connected cases decided by this Court by a common order dated 11.02.2021.

6) It may be mentioned that in the case of *Lakshi Das & Ors.* (*supra*), *Gunalata Das & Ors.* (*supra*), and *Sujit Nandi & Ors.*, the co-ordinate Bench of this Court had held the petitioners to be entitled to *ex gratia* on the basis of notification dated 15.11.2014 notwithstanding that the deceased had died in motor vehicle accident.

7) The case of *Sube Singh* (*supra*) has no application in this case, because by invoking Article 21 of the Constitution of India, the Supreme Court of India had granted compensation as the petitioner had established that he had suffered custodial torture.

8) Now we proceed to examine the case of *National Insurance Co. Ltd.* (*supra*). In the said case, the judgment of the Supreme Court of India in the case of *Reliance General Insurance Co. Ltd. v. Shashi Sharma*, (2016) 9 SCC 627; (2020) 0 Supreme(SC) 745, has been referred to. Para-15 and 17 of the case of *National Insurance Co. Ltd.* (*supra*), is quoted below:-

15. *The next issue is about the deduction of the amount receivable by the legal*

representatives of the deceased under the 2006 Rules from the compensation amount determined by the Tribunal in terms of the decision of three-Judge Bench of this Court in Shashi Sharma (supra). This Court, after analysing the relevant rules, opined as follows:

“23. Reverting back to Rule 5, sub-rule (1) provides for the period during which the dependants of the deceased employee may receive financial assistance equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Sub-rule (2) provides that the family shall be eligible to receive family pension as per the normal Rules only after the period during which they would receive the financial assistance in terms of sub-rule (1). Sub-rule (3) guarantees the family of a deceased government employee of a government residence in occupation for a period of one year from the date of death of the employee, upon payment of normal rent/licence fee. By virtue of sub-rule (4), an ex gratia assistance of Rs.25,000 is provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner. Sub-rule (5) clarifies that house rent allowance shall not be a part of allowance for the purposes of calculation of assistance.

24. ... As regards the second part, it deals with income from other source which any way is receivable by the dependants of the deceased government employee. That cannot be deducted from the claim amount for determination of a just compensation under the 1988 Act.

25. The claimants are legitimately entitled to claim for the loss of “pay and wages” of the deceased government employee against the tortfeasor or insurance company, as the case may be, covered by the first part of Rule 5 under the 1988 Act. The claimants or dependants of the deceased government employee (employed by the State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5—“pay and allowances”, which are receivable by them from employer (the State) under Rule 5(1) of the 2006 Rules. In that, if the deceased employee was to survive the motor accident injury, he would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of “pay and wages” of the deceased government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants. ...

26. Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of

the deceased has already been or will be compensated by the employer in the form of ex gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of "pay and allowances" in the form of ex gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the 2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not expressly enable the dependants of the deceased government employee to claim similar amount from the tortfeasor or insurance company because of the accidental death of the deceased government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receivable by the dependants of the deceased government employee under the 2006 Rules towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the normal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits is concerned, if the deceased government employee had survived the accident can still be pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, life insurance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government employee, applying the principle expounded in Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 and United India Insurance Co. Ltd. v. Patrica Jean Mahajan, (2002) 6 SCC 281."

* * *

17. *The view so taken by the High Court is not the correct reading of the decision of three-Judge Bench of this Court in Shashi Sharma (supra) for more than one reason. First, this Court was conscious of the fact that under Rule 5(2) of the 2006 Rules, the family pension receivable by the family would be payable, however, only after the period, during which the financial assistance is received, is completed. In that context, in paragraph 24 of the reported decision, the Court clearly noted that the amount towards family pension cannot be deducted from the claim amount for determination of a just compensation under the Act. Further, the High Court has*

erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee. That is in the teeth of the scheme of the 2006 Rules, in particular Rule 5(2) thereof. The said Rules provide for financial assistance on compassionate grounds, as also, other benefits to the family members of the deceased employee and as a package thereof, Rule 5(2) stipulates that the family pension as per the normal rules would be payable to the family members only after the period of delivery of financial assistance is completed. The validity of this provision is not put in issue. Suffice it to say that the view taken by the High Court in New India Assurance Co. Ltd. v. Ajmero, 2007 SCC OnLine P&H 5370, is a departure from the scheme envisaged by the 2006 Rules, in particular, Rule 5(2). That cannot be countenanced."

9) We now proceed to peruse the decision of the Supreme Court of India in the case of *Shashi Sharma (supra)*. Relevant paragraphs 10 to 12 as extracted from (2020) 0 Supreme(SC) 745 are quoted below:

10. *The question is: whether the principle expounded by the two Judges' Bench in Helen's case, in paragraphs 32 to 35, in particular, can be doubted? In that case the Court was called upon to answer as to whether it will be permissible to disallow the deduction of amount receivable by the dependants of the deceased towards "Life Insurance Policy", from the amount of compensation payable under the provisions of Motor Vehicles Act (in that case Sections 110B, 92A and 92B of the Act of 1939 corresponding to Sections 168, 140 and 141 of the Act of 1988). Paragraphs 32 to 35 read thus:*

"32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that his Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not others forms of death. If there is natural death or

death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. this would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meager liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

"... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ..."

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

34. *This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.*

35. *Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any*

accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual." (emphasis supplied)

11. *This decision has analysed the legal position regarding the application of the general principle for estimating damages under the common law. It has also noted the distinguishing features between the provisions of Fatal Accidents Act, 1855, before its amendment by Act (3 of 1951) and thereafter. It then found that in Gobald's case the Court decided the issue placing reliance on English decisions -as the provisions applicable at that time were similar to Section 9 of the English Fatal Accidents Act, 1846. The Court was neither called upon to determine damages under the Motor Vehicles Act, 1939 nor consider as to any form of deductions are justified under the Motor Vehicles Act. The Court noted that the language of Section 110-B of the Act of 1939 (corresponding to Section 168 of the Act of 1988) is different from Section 1A of the Fatal Accidents Act, 1855. It held that Section 110-B of the Act of 1939 empowers the Tribunal to determine the compensation which appears to it to be "just". The Court held that this provision widens the scope for determination of compensation, which is neither permissible under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846. The Court then went on to analyse the decisions of this Court and held that there is a deliberate departure in the language of the Act of 1939, revealing the intent of the legislature to confer wider discretion on the Tribunal. Therefore, the decisions based on the principles applicable to previous law cannot be invoked while*

adjudicating the compensation payable to the claimant under the Motor Vehicles Act. In Paragraph 28, the Court observed thus:

“28. ... This show that the word “just” was deliberately brought it Section 110 B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that deductions were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section 110-B. The word “just”, as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, un-equitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law.” (emphasis supplied)

12. *The principle expounded in this decision that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the “pecuniary advantage” from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken, is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of two Judges’ Bench in Patricia S. Mahajan’s case (supra), to reject the argument of the*

Insurance Company to deduct the amount receivable by the dependents of the deceased by way of "social security compensation" and "Life Insurance Policy".

10) Therefore, if the petitioner is entitled to any other receivables like pension, EPF, etc., either by operation of statute or by virtue of contract, the same is not deductible from motor vehicle accident claims.

11) In this case in hand, the learned counsel for the petitioner, on a pointed query of the Court had submitted that as per his instructions, the petitioner has also filed a claim petition before the jurisdictional Motor Accident Claims Tribunal.

12) This Court in the case of *Taslima Nasrin v. State of Assam & Ors.*, 2023 0 Supreme(Gau) 1217, had examined the hereinbefore referred notification dated 15.11.2014, in the light of claim made for *ex gratia*, while the deceased had died as a result of electricity accident. The relevant paragraphs are quoted below:-

8. The claim of the Petitioner is on the basis that the husband of the Petitioner was killed due to an accident in public place which comes within the ambit of Serial No. 3 of the Notification dated 15.11.2014. The question however arises in view of the respective submissions made by the counsels for the parties is as to whether the accident which took place, which led to the unfortunate death of the husband of the Petitioner, was in public place?

9. Taking into account the above, this Court finds it necessary to deal with the aspect as to whether the place where the accident took place would come within the ambit of public place. The term 'public place' however has not been defined in the Notification dated 15.11.2014.

* * *

19. In the backdrop of the above, if this Court takes note of the facts involved, it would be seen that the accident occurred when the husband of the Petitioner was repairing the LT Line. Admittedly as regards the access to the LT Line, it was only limited to those authorized by the APDCL Authorities. Under such circumstances, the accident which led to the death of the husband of the Petitioner on account of repairing of the LT Line cannot come within the ambit of the wide definition of 'public place' as mentioned hereinabove.

20. Consequently, this Court is of the opinion that the Petitioner would not be entitled to the benefit of the Notification dated 15.11.2014. Accordingly, the petition being devoid of merits stands dismissed.

13) Therefore, not all accidents would entitle a claimant to the *ex gratia* vide notification dated 15.11.2014.

14) In this case in hand, the claim of the Petitioner is on the basis that her husband was killed due to an accident in public place which comes within the ambit of serial no. 3 of the notification dated 15.11.2014. It is not in dispute that the petitioner can pursue her case for claiming motor vehicle accident compensation before the Motor Accident Claims Tribunal.

15) In the case of *Shashi Sharma (supra)*, the Supreme Court of India had held that a claim based on contract cannot have any correlation to amount receivable under a statute. Therefore, the claim receivable under statute like provident fund, pension, life insurance, retiral benefits, etc. are deemed to be excluded from amount receivable as motor vehicle compensation. The said position is clarified by the 2- Judge Bench in the case of *National Insurance Co. Ltd. (supra)*.

16) The question is whether petitioner is entitled for *ex gratia* compensation under notification dated 15.11.2014, when just and fair compensation for accident involving motor vehicle accident can be otherwise claimed before the Motor Accident Claims Tribunal.

17) The notification dated 15.11.2014, envisaging grant of compensation is found to be relatable to provide *ex gratia* and financial assistance to the persons who were killed/ injured due to extremist violence/

terrorist violence/ acts of miscreant/ communal violence/ ethnic violence/ group-clash/ firing of security forces/ accident, etc., who were kidnapped/ abducted by the extremist/ terrorist/ miscreants and whose dwelling houses are fully burnt/ damaged whether due to acts of extremist/ terrorist/ miscreants or during communal violence/ ethnic violence/ group clash. Therefore, accident must be in connection with acts committed by extremist, terrorist, or miscreants, or accidents arising out of group clash, communal violence, and ethnic violence. The said notification dated 15.11.2014, cannot be read as if all persons suffering from any accident except hit and run case where the offending vehicle remain unidentified in the Final Form after police investigation, would become entitled to *ex gratia* where other statutory remedy is available.

18) The Court is aware of its limitations when it relates to precedential value of the judgment of the co-ordinate Bench. However, it is seen that when the cases of *Lakshi Das & Ors. (supra)*, *Gunalata Das & Ors. (supra)*, and *Sujit Nandi & Ors.* were decided, the case of *Shashi Sharma (supra)* was not brought to the notice of this Court. Thus, the judgment of the Supreme Court of India will have more precedential value and the opinion of the Supreme Court of India will prevail.

19) Moreover, it has been brought to the notice of the Court that the Govt. of Assam, vide notification No. E.292233/2 dated 31.10.2023 has already excluded the cases of victims of motor accidents, except hit and run cases and third party (not travelling in vehicle) persons hit by vehicles at public places from the purview of the *ex gratia* as per OM No. RR.33/2014/66 dated 15.11.2014. Therefore, the judgment of Co-ordinate Bench of this Court cannot

be applied in the present case under circumstances altered by notification dated 31.10.2023.

20) Therefore, this writ petition fails and is hereby dismissed.

JUDGE

Comparing Assistant