

GAHC010155932023



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

Case No. : WP(C)/4112/2023

HASNA BIBI
W/O MAJA ALI, VILL - NO. 2 SIMINA, P.O. - SIMINA, P.S. - PALASHBARI,
DIST - KAMRUP, ASSAM, PIN - 781122

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPTT., RELIEF
AND REHABILITATION BRANCH, DISPUR, GUWAHATI-06

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

3:THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
P.O.-AMINGAON
DIST- KAMRUP
ASSAM
PIN-781031

4:THE SUPERINTENDENT OF POLICE
KAMRUP
AMINGAON
P.O. - AMINGAON
DIST - KAMRUP
ASSAM
PIN - 781031

5:THE OFFICER -IN- CHARGE OF CHHAYGAON POLICE STATION
P.O. - CHHAYGAON
DIST - KAMRUP
ASSAM
PIN - 781124

6:THE CIRCLE OFFICER OF CHHAYGAON REVENUE CIRCLE
P.O.-CHHAYGAON
DIST- KAMRUP
ASSAM
PIN-78112

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 26-06-2024

1. Heard Mr. M.R. Khandakar, learned counsel for the petitioner. Also heard Mr. N. Goswami, learned Government Advocate for the State respondent and Ms. G. Hazarika, learned Standing Counsel, Revenue for respondent No. 1 and Mr. B. Gogoi, learned Standing Counsel, Finance.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is seeking ex-gratia grant of Rs. 2 lakhs in terms of the Notification dated 15.11.2014 on the ground that the petitioner's son expired due to a road accident. The case of the petitioner is that on 10.03.2023 at around 7.30 PM while the petitioner's son was coming towards Kukurmara from Chhaygaon sitting behind in a bullet motor-cycle bearing Registration No. AS-25T-8392 and while they reached at Nowapara on 17th No. National Highway, the rider of the motor-cycle due to high speed and negligent having lost his control injured the

two persons seriously and in such accident, the petitioner's son sustained serious injuries for which he ultimately died. The police report dated 24.04.2023 also reveals that the petitioner's son died due to a public road accident on 10.03.2023. It further appears from the affidavit-in-opposition filed by the respondent No. 4 that based on the FIR a case has been registered at Chhaygaon Police Station with Chhaygaon P.S. Case No. 169/2023 registered u/s 279/338/304(A) IPC and after completion of investigation charge-sheet vide C.S. No. 123/2023 has been submitted on 29.04.2023. As such the petitioner being the mother is entitled for getting the ex-gratia grant for Rs. 2 lakhs as per the Government Notification dated 15.11.2014 but since the same has not been paid till date, the instant writ petition has been filed.

3. I have heard the learned counsel for the parties at length and perused the materials available on record.

4. Mr. N. Goswami, the learned Government Advocate fairly submits that the instant case is covered by the Notification dated 15.11.2014 for granting ex-gratia compensation to the petitioner whose son was died due to an accident in the public area.

5. The relevant portion of the Notification dated 15.11.2014 reads as follows:-

GOVERNMENT OF ASSAM
REVENUE & DISASTER MANAGEMENT DEPARTMENT
RELIEF & REHABILITATION BRANCH

No.RR.33/2014/55

Dated Dispur, the 15th November/2014,

NOTIFICATION

The Governor of Assam is pleased to revise the quantum of relief in respect of 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 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.

This notification shall come into force with immediate effect.

The revised rates shall be applicable in respect of the incidents, which may occur in the State as on or after the date of issue of the notification in super session of the previous notifications in this regard. The incidents prior to 15th November, 2014 will be governed by the O.M./notifications relevant to the period concerned.

SL No.	Nature of Incident	Quantum of relief
1.	<i>Ex-gratia grant to the NOK of persons killed and whose (the person, killed) age is 18 years or above-</i> <i>1. by extremist/terrorist/miscreants (when as per the report of Police, the killing is not a result of private dispute)</i> <i>2. during communal/ethnic/group clashes</i> <i>3. due to the firing of security forces (if the person killed is innocent as per report of Deputy Commissioner/ Superintendent of Police etc.)</i>	Rs. 5,00,000.00
2.	<i>Ex-gratia grant to the NOK of persons killed and whose (the person killed) age is below 18 years-</i> <i>1. by extremist/terrorist/miscreants (when as per the report of Police, the killing is not a result of private dispute)</i> <i>2. during communal/ethnic/group clash</i> <i>3. due to the firing of security forces (if the person killed is innocent as per report of Deputy Commissioner/ Superintendent of Police etc.)</i>	Rs.3,00,000.00
3	<i>Ex gratia to the NOK, of person killed due to accident in public places or in public carriers (other than killed by extremist/terrorist /miscreants and due to the firing of security forces)</i>	Rs.2,00,000.00

4.	<i>Ex gratia to the NOK of persons kidnapped/abducted by terrorist / extremists/miscreants and whose age is 18 years or above.</i>	<i>Rs. 5,00,000.00</i>
5.	<i>Ex gratia to the NOK of persons kidnapped/abducted by terrorist /extremists/miscreants and whose age is below 18 years.</i>	<i>Rs.3,00,000.00</i>
6.	<i>Financial assistance to those who sustain simple injury-</i> <i>1. due to the act of terrorist / extremists / miscreants (when as per the report of Police, the injury is not a result of private dispute).</i> <i>2. during communal/ethnic/group clash</i> <i>3. due to the firing of security forces (if the injured person is innocent)</i>	<i>Rs. 20,000.00</i>
7.	<i>Financial assistance to those who sustain grievous injury</i> <i>1. due to the act of terrorist / extremists / miscreants (when as per the report of Police, the injury is not a result of private dispute)</i> <i>2. during communal / ethnic / group clash.</i> <i>3. due to the firing of security forces (if the injured person is innocent).</i>	<i>Rs. 1,00,000.00</i>
8.	<i>Financial assistance to persons who become permanently invalid-</i> <i>1. due to the act of terrorist / extremists / miscreants (when as per the report of Police, the injury is not a result of private dispute)</i>	<i>Rs. 3,00,000.00</i>

	2. during communal / ethnic / group clash 3. due to the firing of security forces (if the permanently invalid person is innocent)	
9.	Rehabilitation grant to all those whose dwelling houses are fully burnt/damaged whether due to acts of extremist / terrorist/ miscreants or during communal / ethnic / group clashes irrespective of the nature of rights/ title over land.	Rs. 50,000.00

Sd/-

(S. C. Das, IAS)
Additional Chief Secretary,
Revenue & D.M. Department

5. A perusal of Serial No. 3 of the aforesaid notification abundantly reveals that the petitioner's son who was knocked by a vehicle to death in the public road is entitled to compensation of Rs. 2 lakhs.

6. Further the decision of this Court in the case of **Lakshi Das vs. Gyanendra Dev Triparthi**, reported in **2023 2 GauLT 850** clearly covers the issue in hand. Paragraph Nos. 10, 15, 19, 20, 21 of the aforesaid judgment is extracted hereunder for ready reference which is as follows:-

“10. The only consideration that the respondent authorities are required to undertake upon such claim for ex-gratia payment being made on account of death caused to a person in a motor accident is- (i) Whether the accident as per the records had actually taken place; (ii) Whether the person for whose death the ex-gratia is claimed was actually involved in such motor accident and due to such accident death was caused to the person concerned; (iii) Whether the person claiming ex-gratia is in fact the next of kin of the person who had died in the motor accident and the person concerned is otherwise entitled to the payment to the exclusion of all others, who also may have similar claim, in other words, there has to be a determination on the class of legal heirs of the deceased who may have made the claim; and (iv) Whether the payment of ex-gratia in respect of the death caused to the person concerned in a motor accident had not been earlier claimed and paid to

any other person. Upon determination by the authorities, if the aforesaid four conditions are held to be in favour of the claimant, we see no reason why under the law, the ex-gratia payment of Rs. 2,00,000/- would not be paid to the person claiming such ex-gratia. If for any reason the authorities are of the view that the person claiming for the ex-gratia payment would not be entitled to such payment because of not satisfying any of the four conditions, or any other conditions as may be applicable, it is for the authorities to pass a reasoned order on the same indicating the result of such examination. 15. On the other hand, the expressions 'ex-gratia' and 'ex-gratia payment' are defined as extracted:- 2024:GAU-AS:4624 Page No.# 5/6 "Ex-gratia- As a favour, not legally necessary. Ex-gratia payment- A payment not legally required; esp., an insurance payment not required to be made under an insurance policy." 19. Ex-gratia payment under the law is a payment made as a favour in a circumstance where there is no legal necessity to make any such payment. A payment by one person causing damage or injury to another person by means of a compensation is a payment which is not made as a favour, but it is a payment which is a legal necessity under the law whereas an ex-gratia payment is a payment which is made as a favour and without any legal necessity. 20. On the basis of the contrasting legal meaning of the two different modes of payment i.e. a payment as compensation and the payment as an ex-gratia, we have to understand that a payment that may be made as an ex-gratia simpliciter cannot be included to be within the concept of being a payment as compensation. 21. In view of the above conclusion, we are of the view that the question that has been raised as to whether the payment of ex-gratia to be made under the notification dated 15.11.2014 has to be returned back to the insurer upon an actual compensation being made under either the Act of 1988 or any other law or otherwise, would have to be answered that the payment of ex-gratia which admittedly is made as a favour and without any legal necessity would not have to be returned either by the beneficiary or by the State authorities to the insurer under section 163 (1) of the Act of 1988 upon an actual payment of compensation being made to the victim of a motor accident in either under the provisions of the Act of 1988 or under any other law or otherwise."

7. In view of the above it appears that the petitioner has made a case for grant of ex-gratia compensation. Accordingly, in the interest of justice this Court directs the respondents to pay the ex-gratia amount of Rs. 2 lakhs upon proper verification in terms of the Notification 15.11.2020 to the petitioner within a period of 2 months from the date of receipt of the certified copy of this order.

8. With the aforesaid observations and directions this writ petition is disposed of.

JUDGE

Comparing Assistant