

DISPUR
GUWAHATI-06.
3:THE DEPUTY COMMISSIONER OF KAMRUP (M) AT GUWAHATI

LICHUBAGAN
HENGRABARI
PIN-781036.
4:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE
P.O. BELTOLA
P.S. BASISTHA
DIST. KAMRUP (M)
ASSAM
PIN-781028.
5:THE OFFICER IN CHARGE

DISPUR POLICE STATION
P.O. DISPUR
DIST. KAMRUP (M)
ASSAM
PIN-781006.

Advocate for : MR. R Deka
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 30-01-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. SI Akand, learned counsel for the petitioners, Mr. D Nath, learned Senior Government Advocate for the respondents in the various departments of the State of Assam and Mr. R Borpujari, learned counsel for the respondents in the Revenue and Disaster Management Department of the Government of Assam as well as the Finance Department of the Government of Assam.

2. Cont.Cas(C) No. 595/2022 has been instituted alleging wilful and deliberate violation of the order of the Court dated 25.08.2021 in WP(C) No.

4147/2021. The petitioner Smti Lakshi Das had instituted WP(C) No. 4147/2021 claiming for ex-gratia payment on the death caused to her husband in a motor accident on 30.11.2018. The petitioner claimed that as per the Government Notification No. RR.33/2014/66 dated 15.11.2014 of the Revenue and Disaster Management Department of the Government of Assam, there is an entitlement to an ex-gratia payment.

3. Clause-3 of the said notification inter-alia provides for an ex-gratia payment of Rs. 2, 00, 000/- to the next of kin of persons killed due to accident in public places or in public carriers (other than those killed by extremist/terrorist/miscreants and due to the firing of security forces).

4. An issue came up in WP(C) No. 2100/2019 on the question as to whether a person killed in a motor accident simpliciter would also be entitled to the ex-gratia payment of Rs. 2, 00, 000/- as provided in the notification dated 15.11.2014. By the judgment dated 04.05.2019, it was inter-alia held that a motor accident simpliciter would also be an accident in a public place and accordingly by giving the said interpretation, it was held that the amount of Rs. 2, 00, 000/- provided in the notification dated 15.11.2014 would also be applicable and payable by the State authorities in the Revenue and Disaster Management Department to the next of kin of a person, who may have been killed in a motor accident.

5. In the said judgment dated 04.05.2019, it was also provided that the provisions of the notification dated 15.11.2014 is a beneficial provision and therefore, it is required to be given a liberal and wide interpretation. In the judgment dated 04.05.2019 in WP(C) No. 2100/2019, it was further provided that a relief of ex-gratia payment provided in the notification dated 15.11.2014 is a relief in addition to the compensation which the next of kin of a person

killed due to a motor accident would be entitled under the law of Tort as recognized by various statutes including the Motor Vehicles Act, 1988 (in short Act of 1988).

6. In the circumstance, by the order dated 25.08.2021 in WP(C) No. 4147/2021, a direction was issued to the respondent No. 2 therein namely the Deputy Commissioner, Baksa to examine the claim of the petitioner Smti Lakshi Das for ex-gratia payment of Rs. 2, 00, 000/- pursuant to the notification dated 15.11.2014. On an alleged wilful and deliberate violation of the said direction in the order dated 25.08.2021, contempt petition No. 595/2022 is instituted.

7. Similarly, Cont.Cas(C) No. 592/2022 is instituted on an alleged wilful and deliberate violation of the order dated 16.06.2022 in WP(C) No. 4905/2021 and Cont.Cas(C) No. 600/2022 is instituted alleging wilful and deliberate violation of the order dated 06.09.2021 in WP(C) No. 3603/2020. Both the orders dated 06.09.2021 and 16.06.2022 also pertain to a direction to the respondents therein for payment of the ex-gratia payment of Rs. 2, 00, 000/- on account of death of the next of kin of the persons claiming the ex-gratia payment due to a motor accident.

8. WP(C) No. 2595/2021, WP(C) No. 6920/2022, WP(C) No. 6923/2022 and WP(C) No. 6937/2022 are also individual writ petitions filed by the next of kin of a person who was killed in the respective motor accidents for the payment of ex-gratia amount of Rs. 2, 00, 000/- respectively.

9. The provisions of the notification dated 15.11.2014 read with the judgment of this Court dated 04.05.2019 in WP(C) No. 2100/2019 makes it discernible that the next of kin of a person who was killed in a motor accident would be entitled to the payment of an ex-gratia amount of Rs. 2, 00, 000/- and

such payment of ex-gratia would be over and above that such person may be entitled as a compensation under any other law including the provisions of the Act of 1988.

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.

11. The authorities in the Revenue and Disaster Management Department of

the Government of Assam as well as the Finance Department have raised an issue as to whether the amount of ex-gratia, which has been already held to be a payment in addition to or over and above the payment of compensation in case of a death or injury in motor accident, would be payable in view of the provisions of section 163 of the Act of 1988, which inter-alia provides that the payment of compensation in respect of death or of grievous hurt to any person under section 161 of the Act of 1988 i.e. for payment of Rs. 2, 00, 000/- as a statutory amount in respect of any hit and run case, would have to be refunded back to the insurer, if any such compensation had already been paid either under the provisions of the Act of 1988 or any other law or otherwise. In other words, according to the Revenue and Disaster Management Department of the Government of Assam, the provisions of Section 163 of the Act of 1988 makes the provision in the judgment dated 04.05.2019 in WP(C) No. 2100/2019 that the amount of ex-gratia payment is paid over and above any other compensation under the law, to be redundant inasmuch as, the said amount has to be returned back by the beneficiary to the insurer upon a determination of any compensation either under section 161 of the Motor Vehicles Act, 1988 or under any other provisions as stated therein. Section 163(1) of the Act of 1988 is extracted as below:-

“(1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provisions of this Act or any other law for the time being in force or otherwise, so much of the other compensation or such other amount aforesaid is equal to the compensation paid under section 161, shall be refunded to the insurer.”

12. The provision of section 163(1) of the Act of 1988 provides that whenever

payment of compensation is awarded or paid in respect of such death or grievous injury in respect of a motor accident under any other provision of the Act of 1988 or any other law for the time being in force or otherwise, so much of the other compensation or other amount as is equal to the compensation paid under section 161 of the Act of 1988 shall be refunded to the insurer.

13. A reading of Section 163(1) makes it discernible that if any ex-gratia had been paid in respect of a motor accident death or grievous injury either under any other provision of the Act of 1988 or any other law for the time being in force or otherwise, such amount has to be refunded back to the insurer by the beneficiary upon a determination of the compensation under the Act of 1988. In view of the provision of Section 163(1) of the Act of 1988, which provides that any other compensation that may have been paid under the said Act itself or under any other law or otherwise has to be refunded back to the insurer, we are now required to examine as to whether the amount of ex-gratia paid by the Revenue and Disaster Management Department of the Government of Assam under the notification dated 15.11.2014 in respect of a death caused in a motor accident is an amount paid by the authorities as a compensation.

14. In Black's Law Dictionary, the word '*compensation*' is defined as extracted:-

“Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another.”

15. On the other hand, the expressions '*ex-gratia*' and '*ex-gratia payment*' are defined as extracted:-

“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.”

16. A reading of the meaning of the expression '*compensation*' makes the meaning explicit that compensation is a payment of damages or any other act that a court orders to be done by a person who has caused injury to another. In other words, it is a payment to compensate the damages or injury that a person may cause to another meaning thereby that it is a payment under the necessity of law.

17. When we refer to the expression '*compensation*' appearing in the Motor Vehicles Act, 1988, it has to be understood that due to a motor accident, some damage or injury has been caused by one person to another and the law requires the person causing the damage or injury to compensate the other, which again under the law is undertaken by an insurance company to make the payment on behalf of the person who caused the damage or injury, where it is further provided that in the event of a hit and run case, where the person causing the damage or injury would be unidentifiable, it is the State who undertakes to make such payment on behalf of the person causing the damage or injury. In other words, the entire concept of claiming the compensation either under the Act of 1988 or any other law or otherwise is to pay for the damages or injuries that one person may have caused to another person by means of a motor accident.

18. But when we look into the notification dated 15.11.2014, it is discernible that the notification itself is for providing an ex-gratia payment to the next of kin of a person killed in an accident in the public place, which has also been interpreted in the judgment dated 04.05.2019 in WP(C) No. 2100/2019 to also include the death caused in a motor accident.

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.

22. With the above clarification, a common direction is issued to the respondents in all the matters under consideration in the present judgment i.e. Cont.Cas(C) 595/2022, Cont.Cas(C) 592/2022, Cont.Cas(C) 600/2022, WP(C) No. 2595/2021, WP(C) No. 6920/2022, WP(C) No. 6923/2022 and WP(C) No. 6937/2022 to examine the various claims of the respective petitioners and the examination to be done by the respective Deputy Commissioners involved as to whether the aforesaid four conditions indicated hereinabove, or any other

applicable condition, are satisfied in favour of the claimants and in the event the conditions are satisfied, appropriate orders for payment of compensation may be made and such orders may be honoured by the Revenue and Disaster Management Department as well as the Finance Department for ensuring that the actual payment is received by the person concerned and in the event any such person do not satisfy either of the four conditions or any other applicable condition, appropriate orders may be passed and the person concerned may be informed accordingly.

23. For expediting the matter, we require the petitioners to make fresh individual applications before the respective Deputy Commissioners. The Deputy Commissioners shall within a period of two months of the respective applications being received, consider and pass individual reasoned orders as indicated above. If the order is against payment of ex-gratia, the person concerned be duly informed and if it is in favour of such payment, the same be transmitted to the Revenue and Disaster Management Department, who shall within a period of another one month therefrom make the actual payment to the respective beneficiaries.

24. The requirement of the Deputy Commissioners or any other authority determining the eligibility of a claimant to be paid the ex-gratia amount to strictly examine the satisfaction of the four conditions provided herein, more particularly, the condition to examine whether the claimant is the most suitable of the next of kin to the exclusion of others, i.e. whether the deceased had his own family of wife and children, and if yes, why the compensation should be paid to others without any no objection from them, be circulated amongst all the Deputy Commissioners and other authorities who may determine the eligibility of the ex-gratia amount, so that the appropriate determination is made

before disbursing any payment of ex-gratia. For the purpose, a copy of this order be made available to Mr. D Nath, learned Senior Government Advocate for adequate circulation to the above requirements to be made by the Deputy Commissioner or the authority who may make the determination. Payment to others can be given its consideration only upon a satisfaction that the deceased did not have his wife or children, or in case of an unmarried person, his parents. The requirement of such determination be strictly complied with by the Deputy Commissioners and other authorities.

The contempt petitions as well as the writ petitions are allowed to the extent as indicated above.

JUDGE

Comparing Assistant